

Congress of the United States

Washington, DC 20510

February 21, 2019

Charles J. Sheehan
Acting Inspector General
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Acting Inspector General Sheehan,

We write to request that the Environmental Protection Agency (EPA) Office of Inspector General (OIG) conduct an investigation into potential violations of the Ethics in Government Act by William Wehrum, Assistant Administrator for the EPA Office of Air and Radiation (OAR), and David Harlow, Senior Counsel in OAR. We are troubled that it appears that Mr. Wehrum and Mr. Harlow may have violated the law and associated regulations given their direct involvement in EPA's December 7, 2017 memo titled "New Source Review Preconstruction Permitting Requirements: Enforceability and Use of the Actual-to-Projected-Actual Applicability Test in Determining Major Modification Applicability" ("DTE Memo"). The memo disavowed EPA's position in litigation against DTE Energy Company ("DTE litigation"), a client of Mr. Wehrum's and Mr. Harlow's former law firm, Hunton & Williams, and of Mr. Harlow's himself.

While the underlying facts and legal arguments in the DTE litigation are complicated, the ethics violations are simple and clear: federal employees may not participate in particular matters that involve their former clients or employers. Hunton & Williams has represented DTE in the DTE litigation since it started in 2010. Shortly after Mr. Wehrum and Mr. Harlow arrived at EPA, the agency abandoned its long-standing position and adopted the views of DTE on the legal issue central to the case, which was then pending before the United States Supreme Court. The memo was widely understood at EPA to be about the DTE litigation, the memo itself discussed the litigation, and it was issued expressly to affect the Supreme Court's decision on whether to grant a writ of certiorari. The DTE memo is a particular matter involving a client represented by their former law firm, and their participation in it was prohibited by the ethics rules.

We believe an OIG investigation is warranted in this case. No other federal agency or component of EPA will be able to fully ascertain whether, and if so, the degree to which, ethics violations have occurred. With respect to Mr. Wehrum, the facts suggest that he may have ignored ethics advice from the Office of General Counsel, which may have resulted in improper conduct. The allegations as to both men are based in large part on heavily redacted documents released by EPA in response to Freedom of Information Act requests. OIG has the authority to review unredacted communications and compel interviews with current EPA employees, both of which will be necessary for a complete investigation. Furthermore, one of your mandates under the Inspector General Act of 1978 is to keep "the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the

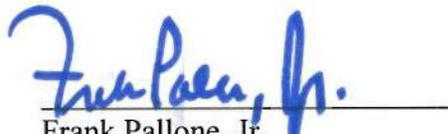
necessity for and progress of corrective action.”¹ We view this request as consistent with that responsibility.

Attached is additional information in support of this request. We respectfully request you give this matter your fullest consideration. Should you have any questions, please contact Joe Gaeta (joe_gaeta@whitehouse.senate.gov) of Senator Whitehouse’s staff, Michal Freedhoff (michal_freedhoff@epw.senate.gov) of Senator Carper’s Environment and Public Works Committee staff, or Jon Monger (jon.monger@mail.house.gov) of the House Energy and Commerce Committee staff.

Sincerely,


Sheldon Whitehouse
United States Senator


Thomas R. Carper
United States Senator


Frank Pallone, Jr.
United States Representative

¹ 5 U.S.C. (IG Act) App. § 2(3)

The Ethics In Government Act prohibits Mr. Wehrum and Mr. Harlow from participating in the DTE litigation.

The Ethics in Government Act and associated regulations are designed to prevent the appearance of a conflict of interest when federal officials perform their official duties. “[A]n employee should not participate in a particular matter involving specific parties... in which he knows a person with whom he has a covered relationship is or represents a party [to such a matter], if he determines that a reasonable person with knowledge of the relevant facts would question his impartiality in the matter.”² An attorney who enters federal service from a private law firm has a covered relationship with the firm and all its clients, and must recuse himself from matters handled by that law firm for a period of one year.³

Mr. Wehrum and Mr. Harlow both left their law practices at Hunton & Williams to take positions at EPA.⁴ Hunton & Williams has represented DTE Energy in the DTE litigation since 2010 and continues to represent them today. Exhibits A and B.

Both Mr. Wehrum and Mr. Harlow were aware of their recusal obligations. The Assistant Administrator for OAR is a Senate-confirmed position. Accordingly, prior to his nomination hearing before the Senate Environment and Public Works Committee, Mr. Wehrum entered into an ethics agreement with EPA acknowledging his responsibility to recuse himself from participating in particular matters involving Hunton & Williams and its clients. This understanding was memorialized in an August 28, 2017 pre-confirmation letter to EPA Designated Agency Ethics Official Kevin Minoli. Exhibit C. That responsibility was confirmed in a recusal statement dated September 17, 2018. Exhibit D.

Mr. Harlow is currently Senior Counsel at OAR. He appears to have been suggested for that position by Mr. Wehrum. Exhibit E. Harlow started work at EPA on October 1, 2017. Exhibit F. Mr. Harlow acknowledged his responsibility not to participate in any particular matters involving Hunton & Williams or its clients in a memo to his supervisor, Mr. Wehrum, on December 28, 2017. Exhibit G.

It is beyond dispute that Mr. Wehrum and Mr. Harlow, in their EPA positions, cannot be involved in the DTE litigation because Hunton & Williams currently represents DTE. With respect to Mr. Wehrum, at the time the DTE memo (Exhibit H) was issued EPA reportedly acknowledged that ethics rules prohibited his participation in its development.⁵ Their recusal

² 5 C.F.R. § 2635.502(a)

³ *Id.* at 502(b)(iv). See also Office of Government Ethics, “Conflicts of Interest Considerations: Law Firm or Consulting Employment,” (June 22, 2018) available at [https://www.oge.gov/web/OGES.nsf/0/53BE4061E9EFDEB4852582B400626DAA/\\$FILE/Law%20Firm%20or%20Consulting%20Employment.pdf](https://www.oge.gov/web/OGES.nsf/0/53BE4061E9EFDEB4852582B400626DAA/$FILE/Law%20Firm%20or%20Consulting%20Employment.pdf). While an employee may seek authorization from the agency to participate in a particular matter notwithstanding the conflict, neither Mr. Wehrum nor Mr. Harlow appear to have received any such authorization here.

⁴ Hunton & Williams is now Hunton, Andrews and Kurth.

⁵ Timothy Cama, “EPA works to ease air pollution permitting process,” *The Hill*, Dec. 8, 2017, (“[T]he agency said Wehrum was not involved in Thursday’s memo, having recused himself because his former law firm, Hunton & Williams, represents DTE in the litigation.”) available at

statements additionally show how closely they are tied to the parties and issues involved in the DTE litigation. Mr. Harlow's recusal statement lists DTE as a client. Exhibit G. Both of their recusal statements list the Utility Air Regulatory Group (UARG) as a former client.⁶ Exhibits D and G. Mr. Wehrum personally entered an appearance and filed a brief on behalf of UARG in the DTE litigation in support of DTE's position. Exhibit I. As recently as 2016, it has been reported that DTE Energy self-identified as a member of UARG.⁷

Mr. Wehrum ignored OGC advice and took ten months to finalize and make public his required recusals, including those from particular matters involving Hunton & Williams.

Mr. Wehrum was confirmed by the United States Senate on November 9, 2017. Mr. Wehrum's first "Certification of Ethics Agreement Compliance" was signed by him and dated December 7, 2017, and then modified on December 19, 2017. Exhibit J. Through this certification, Mr. Wehrum represented that "I am recusing from particular matters in which any former employer or client I served in the past year is a party or represents a party, unless I have been authorized under 5 C.F.R. § 2635.502(d)," and that he had not received any authorizations exempting particular matters from this requirement.⁸

At EPA, recusals are memorialized in "recusal statements" negotiated between career ethics officials and nominees once they are confirmed. While the duty to recuse applies irrespective of whether and when a recusal statement has been signed by an employee, these statements, combined with an employee's ethics agreement, provide a clear roadmap for other EPA employees, Congress, and the public about an employee's ethics obligations under the law. Mr. Wehrum's recusal statement should have been complete when he signed his "Certification of Ethics Agreement Compliance" on December 7, 2017. After multiple inquiries over many months, we learned it was not.

Senator Whitehouse first requested Mr. Wehrum's recusal statement on February 21, 2018 from ethics officials in EPA's Office of General Counsel. That request was transferred to the Office of Congressional and Intergovernmental Relations. Senator Whitehouse's staff repeatedly requested this document on March 16, 2018, March 22, 2018, and April 23, 2018. On April 25, 2018, Senator Whitehouse wrote to Administrator Pruitt requesting this

<https://thehill.com/policy/energy-environment/364015-epa-works-to-ease-air-pollution-permitting-process>.

⁶ UARG is not an incorporated entity and does not appear to have a staff, physical location, or presence of any sort outside of Hunton & Williams. Its membership and decision-making processes appear opaque, and it has been described as "a front group of convenience [that] allows individual electric utility companies to shield their names and anti-public health crusades from public awareness." John Walke, "Is Your Power Company Fighting in Court Against Safeguards From Mercury and Toxic Air Pollution?" NRDC, May 25, 2012, available at <https://www.nrdc.org/experts/john-walke/your-power-company-fighting-court-against-safeguards-mercury-and-toxic-air>.

⁷ Annalee Armstrong, "Power companies wield influence through anonymous group," *S&P Global*, July 19, 2016 available at <https://www.snl.com/web/client?auth=inherit#news/article?id=37072675&cedid=A-37072675-13095>

⁸ The form also requires the signer to acknowledge that knows that any intentionally false or misleading statement or response provided in the Certification is a violation of law.

information. Months passed and EPA still did not provide a signed recusal statement from Mr. Wehrum.

On August 19, 2018—over eight months after he certified compliance with his ethics agreement—*The New York Times* reported that Mr. Wehrum had refused to sign a recusal statement because he claimed that he had received conflicting advice from ethics officials.⁹ EPA’s top ethics official Kevin Minoli explained in a September 29, 2018 letter to Senator Whitehouse that Mr. Wehrum was advised pursuant to Office of Government Ethics (OGE) legal advisories that apply to all members of the Trump administration. Exhibit K. Mr. Wehrum also was advised about the “importance of signing a recusal statement” but nevertheless he “chose to use other tools that *he deemed effective* in helping him comply with the ethics requirements....”¹⁰ *Id.* (emphasis added.) To date, it remains unclear what that conflicting advice may have been, what recusals and ethics rules Mr. Wehrum followed during this time, and how in the absence of a recusal statement EPA ensured his compliance with all applicable ethics laws and regulations.

To address Mr. Wehrum’s ongoing refusal to sign a recusal statement, Senator Whitehouse filed an amendment to the Blocking Regulatory Interference from Closing Kilns Act of 2018 (BRICK Act) that would have required EPA to disclose the statement. Senator Whitehouse filed his amendment on Friday, September 14, 2018. Two business days later (an hour before a scheduled markup of the BRICK Act by the Environment and Public Works Committee), he finally received a recusal statement signed by Mr. Wehrum on September 17, 2018 and a new “Certification of Ethics Agreement Compliance.” Exhibits D and L. Following those disclosures, Senator Whitehouse asked Acting Administrator Andrew Wheeler for additional information about Mr. Wehrum’s compliance with the terms of his recusals, but as of the date of this letter he has not yet received a response.¹¹

DTE has been represented by Wehrum’s and Harlow’s former law firm in the DTE litigation since 2010.

In August 2010, EPA, represented by the Department of Justice, filed an enforcement action against DTE, alleging Clean Air Act violations by DTE at its Monroe facility, the largest coal-fired power plant in Michigan. EPA claimed DTE failed to acquire the necessary permit before undertaking significant modifications at the plant and stated that had DTE sought that permit it would have been required to install modern pollution controls and dramatically cut its pollution. The government’s case was based on the New Source Review (“NSR”) provisions of the Clean Air Act. NSR is designed to require facilities to upgrade their pollution controls when they upgrade their plants. Hunton & Williams represented DTE in this case.

⁹ Eric Lipton, “As Trump Dismantles Clean Air Rules, an Industry Lawyer Delivers for Ex-Clients,” *New York Times*, August 19 2018, available at <https://www.nytimes.com/2018/08/19/us/politics/epa-coal-emissions-standards-william-wehrum.html>

¹⁰ In this letter Mr. Minoli also reaffirmed that Mr. Wehrum had not been granted any authorizations to the impartiality requirements of OGE regulations.

¹¹ <https://www.whitehouse.senate.gov/news/release/whitehouse-calls-out-wehrum-for-flaunting-trump-ethics-pledge>

DTE vigorously contested the enforcement case, which made two trips to the 6th Circuit Court of Appeals during the next eight years. During the first appeal in 2013 (“DTE I”), in which EPA prevailed, the circuit court noted that “whether a permit is ultimately required is a high stakes determination.”¹² The Court found the modern pollution controls that would be required if EPA prevailed would reduce pollution by over 90%, but would also be very expensive; DTE claimed these upgrades would cost DTE about \$1.7 billion.¹³

The second decision by the Sixth Circuit (“DTE II”) was issued on January 10, 2017, again siding with EPA.¹⁴ The Court stated that although DTE upgraded its pollution control equipment while the enforcement case against it was pending, “if [DTE] is found to have violated the Act, DTE still could face monetary penalties and be required to mitigate excess emissions caused by the delay in installing pollution controls.”¹⁵ Facing potentially millions of dollars of penalties and mitigation, DTE filed a petition for a writ of certiorari (“DTE cert petition”) on July 31, 2017, asking the United States Supreme Court to reverse the decision of the Court of Appeals.¹⁶

The DTE cert petition filed by Hunton & Williams was pending before the Supreme Court in the fall of 2017 when Mr. Harlow and Mr. Wehrum left Hunton & Williams and started working at EPA. After the Supreme Court denied certiorari on December 11, 2017, the case was remanded back to the Eastern District of Michigan, where counsel for Hunton & Williams continue to represent it. Exhibit A. The litigation has been stayed pending settlement negotiations since February 2018. *Id.*

EPA’s December 7, 2017 memo was expressly about the DTE litigation.

The central issue in the DTE enforcement litigation was DTE’s failure to seek an NSR permit before undertaking modifications at the Monroe coal-fired power plant, thereby avoiding required upgrades of pollution control equipment. EPA argued that DTE failed to do the appropriate calculations of projected “before” and “after” pollution emissions and that proper calculations show an NSR permit was required. DTE argued that it could do those calculations a different way, resulting in an NSR permit not being required, and that EPA was not allowed to “second guess” DTE’s calculations. In May 2017, while Mr. Wehrum and Mr. Harlow were still at Hunton & Williams, the firm began lobbying EPA to change the rule, specifically citing DTE’s 6th Circuit litigation. Exhibit MM (at pp. 16-17 and fn. 37).

From 2010 to 2017, EPA took the same position throughout the DTE case, prevailing twice before the Court of Appeals. DTE’s cert petition asked the Supreme Court to tell EPA that its long-standing position was wrong. With Wehrum and Harlow now ensconced at EPA, the agency reversed itself, and decided that in fact it now agreed with DTE.

¹² 711 F.3d 643, 647 (6th Cir. 2013)

¹³ *Id.*

¹⁴ 845 F.3d 735 (6th Cir. 2017)

¹⁵ *Id.* at 737 fn. 2

¹⁶ “DTE Initiates Last-Ditch Effort in Clean Air Act Case,” *RTOInsider*, August 8, 2017.

<https://www.rtoinsider.com/dte-energy-supreme-court-clean-air-act-47428/>

On December 7, 2017, EPA issued a memo under Administrator Scott Pruitt's signature reversing EPA's long-standing position.¹⁷ While the DTE Memo announces a generally applicable change in EPA's enforcement position, it is replete with references to the pending DTE litigation and why EPA's position in that litigation was wrong. It also specifically acknowledges the pendency of DTE's cert petition:

The matters at issue in the DTE litigation are complex, and the appellate court decisions have left ambiguity regarding the scope of the applicable regulations and what sources must do to comply. Further, the Supreme Court has been asked to review the second appellate court opinion. Considering this uncertainty, the EPA believes it would be helpful to explain to stakeholders how the EPA plans to proceed in implementing and exercising its authority under those regulations pending further review of these issues by the EPA.

Thus, pending further review of these issues by the courts and the EPA, the agency does not intend to pursue new enforcement cases in circumstances such as those presented in the DTE matter.

Exhibit H. In addition to what the DTE Memo itself says, EPA internal discussion of the DTE memo shows widespread understanding across EPA that the memo is about the DTE case. Exhibits P, W, BB, CC and DD. And according to Mr. Wehrum's schedule, the same day the DTE Memo was released he gave a speech at Hunton & Williams.¹⁸ Exhibit NN.

The DTE Memo was timed to forestall a decision by the Supreme Court in the DTE litigation.

EPA's new DTE Memo was released late in the evening of December 7, 2017, the day before the Supreme Court was set to consider DTE's certiorari petition at its December 8, 2017 conference. Internal EPA emails produced in response to a FOIA request reveal that there were two constraints on the timing for the release of the DTE Memo: avoid releasing it before Administrator Scott Pruitt was done testifying before the House Energy and Commerce Committee on December 7, but get it out in advance of the Supreme Court's consideration of the DTE cert petition the morning of December 8, 2017.

- o December 4, 2017 email from Mandy Gunasekara to Susan Bodine and Patrick Traylor: "Attached is the latest version of the NSR Memo [DTE Memo] pertaining to the issues at issue in the DTE case. I thought we may have more time, but know now that the cert hearing is planned for Wednesday. This memo needs to go out before." Exhibit M.¹⁹

¹⁷ "New US EPA Memorandum Suggests a Hand's-Off Approach to NSR Applicability Determinations," *Fresh Law Blog from the law firm of Squire Patton Boggs*, December 18, 2017, available at <https://www.freshlawblog.com/2017/12/18/new-us-epa-memorandum-suggests-a-hands-off-approach-to-nsr-applicability-determinations/>, which includes a section titled, "U.S. EPA Adopts DTE's Position."

¹⁸ Right before giving that speech, Wehrum met with EPA ethics officials. *Id.*

¹⁹ The email erroneously refers to the Supreme Court conference as a "hearing" and also misstates the day of the conference: it was scheduled for Friday (December 8), not Wednesday, of that week.

- o December 7, 2017 email from Mandy Gunasekara attaching the final version of the DTE Memo “discussed with the Administrator yesterday” and stating that “he would like to get this out today.” Exhibit N.
- o December 7, 2017 email from Mandy Gunasekara to Josh Lewis entitled “re: Signed NSR memo”: “Hold tight until after the energy and comment [sic] hearing. Please have this ready for posting online once the hearing wraps up.” Exhibit O.

The DTE Memo was posted on EPA’s web page sometime during the evening on December 7, 2017. Early on December 8th, the day of the Supreme Court conference on the DTE cert petition, Hunton & Williams sent a letter to the Supreme Court attaching the DTE Memo. Exhibit P.²⁰

Mr. Wehrum and Mr. Harlow were directly involved in the DTE Memo.

William Wehrum

Mr. Wehrum was involved in the DTE Memo before and after it was issued, contradicting EPA’s statement to the media that he was not. The documents show that at minimum he participated in a meeting about the memo on December 5 – two days before the memo was released – and it appears he had additional communications about the memo before its release late on December 7, 2017.

- o The DTE Memo “redacted version” was sent to Mr. Wehrum and Mr. Harlow by Mandy Gunasekara on December 5. Exhibit Q.
- o An email from Brian Doster (OGC) on December 5, 2017 said that there is a “late-breaking” meeting with Mr. Wehrum that day on NSR. The topics for the meeting are redacted. 19 people are listed on the invite to the meeting, and 3 people from the Office of Enforcement and Compliance Assurance are copied. The date, the invitees, and the context of prior conversations about the memo suggest that this meeting with Wehrum includes discussion of the DTE Memo. Exhibit R. The *New York Times* reported that the DTE Memo was discussed with Mr. Wehrum during a meeting on Dec. 5.²¹
- o Susan Bodine copied Mr. Wehrum on her email to Ms. Gunasekara on December 7, 2017, in which she appears to be seeking changes to the DTE Memo before it is released. The content of this email is redacted. Exhibit S.
- o Ms. Bodine sent a second email to Ms. Gunasekara on the DTE Memo on December 7, 2017, also copying Mr. Wehrum, in which Ms. Bodine appears to continue to press for changes. Exhibit S.
- o Ms. Bodine copied Mr. Wehrum on another email on December 8, 2017 in which she says she talked to “SP” [apparently a reference to Scott Pruitt] about the memo. The content of that email is redacted. Exhibit T.
- o Mr. Wehrum was a required participant in a December 11, 2017 conference call about the “NSR Memo.” Exhibit U.

²⁰ The Supreme Court ultimately denied the DTE cert petition and the EPA enforcement case is still pending, albeit in a situation where EPA has announced that its own position in the litigation is wrong.

²¹ Lipton, *supra* note 9.

The emails from Ms. Bodine suggest that she was not pleased with the contents of the DTE Memo. Copying Mr. Wehrum on these emails further suggests he was substantively involved in its development.

Other evidence shows that Mr. Wehrum and others at EPA knew that he should be recused from involvement in the DTE Memo and in some communications attempted to maintain the fiction that he was abiding by that recusal.

- Email to Mr. Wehrum from Ms. Gunasekara on December 5, 2017, attaching a version of the DTE Memo and stating that “I have redacted the potentially offending language given your recusal issues...” Exhibit Q.
- Email from Ms. Gunasekara to Ryan Jackson (Chief of Staff to the Administrator) attaching the DTE Memo for Mr. Jackson to send out to the Regional Administrators. She advised Jackson to “please cc me (since Bill is recused).” Exhibit V.

Notably, in Mr. Wehrum’s September 2018 recusal statement, Ms. Gunasekara is identified as one of two people (along with Josh Lewis) responsible for screening matters related to those listed on his recusal statement, “without [his] knowledge or involvement until after [his] recusal period ends.” Exhibit D. The documents suggest that at this time, a month into Mr. Wehrum’s tenure at EPA, the process had not been communicated to others and/or was not effectively screening matters from Mr. Wehrum’s review.

David Harlow

Mr. Harlow was also involved in the DTE Memo before it was issued. He was sent copies of the draft memo, starting just days after he left Hunton & Williams, where he represented DTE, and started work at EPA.

- Alex Dominguez sent Mr. Harlow the draft DTE Memo on October 6, 2017. Exhibit W.
- Ms. Gunasekara sent Mr. Harlow the DTE memo on November 27, 2017. Exhibit X.
- Ms. Gunasekara sent Mr. Harlow and Mr. Wehrum a “redacted” version of the DTE memo on December 5, 2017. Exhibit Q.
- Mr. Harlow was included on the list of invitees to the December 5, 2017 meeting. Exhibit R.
- Mr. Harlow was a required participant in a December 11, 2017 conference call about the “NSR Memo.” Exhibit U.

Mr. Harlow’s recusal statement, which is in the form of a memo he submitted to Mr. Wehrum on December 28, 2017, identifies Ms. Gunasekara and Mr. Lewis as those responsible for screening matters from which he should be recused. Exhibit G.

An OIG investigation can readily confirm the facts laid out here demonstrating that Mr. Wehrum and Mr. Harlow violated federal ethics rules.

Publicly available information strongly indicates that Mr. Wehrum and Mr. Harlow were involved in the issuance of EPA’s December 7, 2017 DTE memo, despite the fact that the memo was part of a particular matter involving specific parties from which they were required to recuse themselves, and that with respect to Mr. Wehrum, EPA publicly stated he had been recused from

its development. The memo was about the DTE litigation and was timed to affect a critical decision by the Supreme Court in the case.

Ample evidence is available to OIG to further investigate this matter. Further details about email correspondence and meetings in the days leading up to the issuance of the memo would be an obvious source of information. Redacted emails indicate a robust internal debate, possibly pitting the Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance Susan Bodine with Mr. Wehrum's Office of Air and Radiation, including Mr. Wehrum himself right until the memo was issued. A review of the unredacted emails and the documents references in them are likely to shed light on Mr. Wehrum's and Mr. Harlow's substantive involvement in the DTE memo. Their participation can also be confirmed by interviews with other EPA staff, including those addressed in the emails and those who attended the December 5, 2017 NSR meeting.

The reference to a "redacted" version of the DTE Memo sent to Mr. Wehrum and Mr. Harlow on December 5, 2017, suggests a transparent attempt to circumvent Wehrum's and Harlow's recusals, aided by those responsible for policing those very recusals. The redacted version has not been publicly provided, but it is hard to see what could be redacted in a memo to work around the fact that the memo was about the DTE litigation, that the DTE litigation was handled by their former law firm, and that both Wehrum and Harlow knew it.

Conclusion

If an OIG investigation confirms the facts as set forth above, that would mean two senior EPA officials were involved in litigation brought on behalf of EPA where the defendant was represented by their former firm. EPA has released heavily redacted documents after months of requests that make that conclusion almost inevitable. This would be a serious violation of the letter and the intent of federal ethics rules. As of result of the DTE memo and EPA's reversal of its long-standing position, a current client of Hunton & Williams may be in a position to reap a multi-million dollar windfall. EPA OIG is in the best position to look behind the redactions and to interview key staff under penalty of perjury to get to the bottom of this matter.

Timeline

Bolded documents were heavily redacted in the FOIA response and appear likely to be relevant in unredacted form.

- 9/8/17 Scott Pruitt meets with Mandy Gunasekara, Susan Bodine, Patrick Traylor and others about several enforcement matters, including DTE. Exhibit Y.
- 9/12/17 "Following up from Friday" Gunasekara sends a few points "regarding the NSR memo I mentioned" to Josh Lewis and Sarah Dunham, two employees in the front office of OAR. **The referenced document "Emissions Projection Rule outline DRAFT" was not produced in the FOIA response.** Exhibit Z.
- 9/22/17 Outline sent to Susan Bodine by Gunasekara. Exhibit AA.
- 10/3/17 Internal OAR description of "ongoing issues" lists "NSR DTE memo – deliver draft memo on DTE by end of Sept/early Oct." Exhibit BB.
- 10/4/17 **Brian Doster (career attorney in OGC) sends his supervisors (Justin Schwab, Lorie Schmidt, and Gautam Srinivasan) an email "re: Memos related to DTE NSR case," attaching two draft "memos regarding the issues in the DTE NSR litigation:" a draft of the DTE Memo, plus an OGC "companion memo" identifying some points to consider in evaluating the options, and the outline prepared by Gunasekara on 9/12/17. The email is heavily redacted, and the referenced documents were not produced in the FOIA response.** Exhibit CC.
- 10/5/17 **Josh Lewis sends the draft DTE Memo to Gunasekara, cc Alex Dominguez and Sarah Dunham, along with an OGC "analysis of options for addressing NSR issues raised by DTE." The email is heavily redacted but mentions that the draft was reviewed by OGC staff attorneys but that "thus far OECA and regional offices have not been engaged." The referenced attachments were not produced in the FOIA response.** Exhibit DD.
- 10/6/17 Alex Dominguez forwards both memos to David Harlow. **The referenced memos were not produced in the FOIA response.** Exhibit W.
- 10/25/17 Patrick Traylor asks Gunasekara for a copy of the draft DTE Memo indicating that he has not yet seen it; she sends it to him, copying Susan Bodine. Exhibit EE.
- 11/17/17 Meeting with Scott Pruitt on New Source Review with Bill Wehrum, Mandy Gunasekara, Ryan Jackson, Samantha Dravis and Lincoln Ferguson. Exhibit FF.
- 11/27/17 Gunasekara sends the draft DTE Memo to Harlow with the note "first one attached," implying that there had been a conversation between them on the subject before she sent the memo. Exhibit X. **The referenced memo was not produced with the FOIA response.**

- 11/30/17 Gunasekara represents EPA at Hunton & Williams on a panel discussion titled "Which Way Does the Wind Blow: Priorities and Developments in Air Quality and Climate Change". Exhibit GG.
- 12/4/17 Gunasekara sends "the latest version" of the "NSR memo pertaining to the issues at issue in the DTE case" to Susan Bodine and Patrick Traylor, cc to Ryan Jackson, Samantha Dravis and Justin Schwab. She specifically notes that "I thought we may have more time, but know now that the cert hearing is planned for Wednesday. This memo needs to go out before." Exhibit M. In other versions of this same email included in the FOIA response, the reference to having to get the memo out before the Supreme Court conference is redacted as "deliberative." **The referenced attached memo was not produced with the FOIA response.**
- Patrick Traylor and Susan Bodine request a meeting that day and a scheduler is sent by Traylor to Gunasekara, Susan Bodine, and Justin Schwab for a meeting at 6 pm. Exhibit HH.
- 12/5/17 Gunasekara sends the DTE Memo to Lincoln Ferguson for "SP review." Exhibit II.
- Gunasekara sends Wehrum and Harlow a "redacted" version of the DTE Memo for "tomorrow's" meeting, cc Alex Dominguez and Justin Schwab. She says, "I have redacted the potentially offending language given your recusal issues." **The redacted memo was not produced in the FOIA response.** Exhibit Q.
- Brian Doster sends an email to others in OGC re: Meeting today with Wehrum on NSR – May address [redacted], informing them of a "late breaking" meeting that same day with Bill Wehrum. There are multiple redactions in the email, but it appears that the DTE Memo is one of the topics expected to be included in the discussion.** Many people are invited to the meeting scheduled by Bill Wehrum, including Mandy Gunasekara, David Harlow, Susan Bodine, Patrick Traylor and Josh Lewis, cc Phillip Brooks, Apple Chapman, Rosemarie Kelley and Justin Schwab. Exhibit R.
- 12/6/17 OGC sends edits to the DTE Memo to Gunasekara at 10:24 pm. **The email is redacted and the referenced document containing the suggested edits was not produced in the FOIA response.** Exhibit JJ.
- 12/7/17 Gunasekara sends the "final" DTE memo to unnamed people at 10:15 am, saying she "discussed it with the Administrator yesterday. He would like to get this out today." Exhibit N. **The referenced attached memo was not produced in the FOIA response.**
- Gunasekara sends the "final" memo to Susan Bodine at 12:06. The contents of Gunasekara's email are redacted. Susan Bodine immediately responds (with label "Importance: High") to Gunasekara, copying Bill Wehrum, Justin Schwab and Patrick Traylor. The entire contents of Bodine's email**

are redacted. Bodine sends another email to the same people at 5:24 saying “at minimum the first two of the three sentences...” (remainder redacted). Exhibit S.

Bill Wehrum meets with OGE Ethics officials at 2:00. Exhibit NN.

At 3:00, Bill Wehrum gives a speech at his former law firm Hunton & Williams on “rules affecting electric generating companies and other stationary sources. Exhibit NN.

Justin Schwab sends Gunasekara an email at 4:52 pm “expanding on some of the comments on the draft” in an email with the subject “NSR memo – general OGC thoughts on legal risk” copying Susan Bodine and Patrick Traylor. The entire 2-page email is redacted. Exhibit KK.

Liz Bowman (from the press office) emails Gunasekara and Ryan Jackson a draft desk statement titled “Dec. 7 DTE/NSR Memo.” **The draft desk statement is redacted.** Exhibit LL.

The final memo is auto penned and forwarded to Gunasekara and Ryan Jackson. At 5:36, Gunasekara directs Josh Lewis to “hold tight until after the energy and comment [sic] hearing. Please have this ready for posting online once the hearing wraps up.” Exhibit O.

At 6:09 Josh Lewis replies “Got it, and will do.” Exhibit O.

At 10:57 pm Gunasekara sends the memo to Ryan Jackson and says that when he sends it to the Regional Administrators he should “cc me (since Bill is recused).” Exhibit V.

12/8/17 Hunton & Williams sends the DTE Memo to the Supreme Court in advance of the Court’s conference about the DTE cert petition. Exhibit P.

Susan Bodine emails Wehrum and Gunasekara, cc Patrick Traylor “re: NSR memo” that she “spoke to SP about...” The remainder of the email is redacted, except for “he suggested...” and “my suggestion remains...” Exhibit T.

People with relevant information

A review of the publicly available documents suggests that the following EPA employees may have information related to this matter:

Office of Air and Radiation

Bill Wehrum, David Harlow, Mandy Gunasekara, Alex Dominguez, Josh Lewis and Sarah Dunham

Office of General Counsel

Justin Schwab, Lorie Schmidt, Gautam Srinivasan and Brian Doster

OGC ethics attorneys, re whether they were consulted about the need for Wehrum and Harlow to recuse from the DTE Memo and if so, were they provided the necessary facts that are outlined in this request

Office of Enforcement and Compliance Assurance

Susan Bodine, Patrick Traylor, Rosemarie Kelley, Phillip Brooks and Apple Chapman

EXHIBIT A

This case was appealed to
06th Circuit: [11-2328](#), [14-2274](#), [14-2275](#)

US District Court Civil Docket

U.S. District - Michigan Eastern
(Detroit)

2:10cv13101

United States v. Dte Energy et al

This case was retrieved from the court on Tuesday, January 08, 2019

Date Filed: 08/05/2010
Assigned To: District Judge Bernard A. Friedman
Referred To: Magistrate Judge R. Steven Whalen
Nature of
 suit: Environmental (893)
 Cause: Clean Air Act
Lead Docket: None
 Other U.S. Court of Appeals - Sixth Circuit, 11-
 Docket: 02328
 U.S. Court of Appeals - Sixth Circuit, 14-
 02275/14-02274
Jurisdiction: U.S. Government Plaintiff

Class Code: OPEN
Closed:
 Statute: [42:7413\(b\)](#)
Jury Demand: None
Demand Amount: \$0
NOS Description: Environmental

Litigants

United States
Plaintiff

Attorneys

[Elias L. Quinn](#)
ATTORNEY TO BE NOTICED
U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611
Washington , DC 20044-7611
USA
202-305-2020
Email: Elias.Quinn@usdoj.Gov

[Ellen E. Christensen](#)
ATTORNEY TO BE NOTICED
[U.S. Attorney's Office](#)
211 W. Fort Street Suite 2001
Detroit , MI 48226
USA
313-226-9100
Email: Ellen.Christensen@usdoj.Gov

[James W. Beers , Jr.](#)
ATTORNEY TO BE NOTICED
[U. S. Department of Justice](#)
Environmental Enforcement Section
P.O. Box 7611
Washington , DC 20044
USA
202-514-4162
Fax: 202-616-6584
Email: James.Beers@usdoj.Gov

[James A Lofton](#)
ATTORNEY TO BE NOTICED

U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611
Washington, Dc 20044-7611

202-514-2445
Fax: 202-514-2583
Email: Jim.Lofton@usdoj.Gov

[Justin Savage](#)

ATTORNEY TO BE NOTICED
[Term: 03/11/2014]
U.S. Department of Justice
Ben Franklin Station
P.O. Box 7611
Washington , DC 20004
USA
202-514-5293
Fax: 202-616-6584
Email: Justin.Savage@usdoj.Gov

[Kristin M Furrie](#)

ATTORNEY TO BE NOTICED
U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611
Washington,, Dc 20044-7611

202-616-6515
Email: Kristin.Furrie@usdoj.Gov

[Thomas Benson](#)

ATTORNEY TO BE NOTICED
U.S. Department of Justice
Environmental And Natural Resource Div.
Ben Franklin Station
P.O. Box 7611
Washington , DC 20044
USA
202-514-5261
Email: Thomas.Benson@usdoj.Gov

[Andrea S. Issod](#)

ATTORNEY TO BE NOTICED
[Term: 09/29/2010]
[Sierra Club](#)
85 2nd Street 2nd Floor
San Francisco , CA 94105
USA
415-977-5544
Fax: 415-977-5793
Email: Andrea.Issod@sierraclub.Org

[Holly D. Bressett](#)

ATTORNEY TO BE NOTICED
[Sierra Club Environmental Law Program \(San Francisco\)](#)
85 Second Street 2nd Floor
San Francisco , CA 94105-3441
USA
415-977-5646
Fax: 415-977-5793
Email: Holly.Bressett@sierraclub.Org

[Mary M. Whittle](#)

ATTORNEY TO BE NOTICED
[Term: 08/03/2017]
[Guerrero & Whittle PLLC](#)
114 West 7th Street Suite 1100
Austin , TX 78731
USA
5126052300
Fax: 5122225280

Sierra Club
Intervenor Plaintiff

Email: Mary@gwjustice.Com

[Nicholas J. Schroeck](#)
ATTORNEY TO BE NOTICED
[Great Lakes Environmental Law Center](#)
4444 Second Ave
Detroit , MI 48201
USA
313-820-7797
Fax: 313-577-9379
Email: Nschroeck@wayne.Edu

[Shannon W. Fisk](#)
ATTORNEY TO BE NOTICED
[Earthjustice](#)
1617 John F. Kennedy Blvd. Suite 1675
Philadelphia , PA 19103
USA
215-717-4520
Fax: 212-918-1556
Email: Sfik@earthjustice.Org

[Susan L. Williams](#)
ATTORNEY TO BE NOTICED
[Sierra Club](#)
85 Second Street 2nd Floor
San Francisco , CA 94105
USA
415-977-5629
Fax: 415-977-5793
Email: Laurie.Williams@sierraclub.Org

Natural Resources Defense Council
also known as
NRDC
Intervenor Plaintiff

[Andrea S. Issod](#)
[Term: 09/29/2010]
[Sierra Club](#)
85 2nd Street 2nd Floor
San Francisco , CA 94105
USA
415-977-5544
Fax: 415-977-5793
Email: Andrea.Issod@sierraclub.Org

[Holly D. Bressett](#)
ATTORNEY TO BE NOTICED
[Sierra Club Environmental Law Program \(San Francisco\)](#)
85 Second Street 2nd Floor
San Francisco , CA 94105-3441
USA
415-977-5646
Fax: 415-977-5793
Email: Holly.Bressett@sierraclub.Org

[Nicholas J. Schroeck](#)
ATTORNEY TO BE NOTICED
[Great Lakes Environmental Law Center](#)
4444 Second Ave
Detroit , MI 48201
USA
313-820-7797
Fax: 313-577-9379
Email: Nschroeck@wayne.Edu

Dte Energy
Defendant

[Andrea E. Hayden](#)
ATTORNEY TO BE NOTICED
[DTE Energy](#)
Office Of The General Counsel
One Energy Plaza
Wcb 688
Detroit , MI 48226
USA
313-235-3813

Fax: 313-235-0115
Email: Haydena@dtenergy.Com

[Brent A. Rosser](#)

ATTORNEY TO BE NOTICED

[Hunton Andrews Kurth LLP](#)

101 South Tryon Street Bank Of America Plaza Suite 3500
Charlotte , NC 28280

USA

704-378-4700

Fax: 704-378-4890

Email: Brosser@huntonak.Com

[F. William Brownell](#)

ATTORNEY TO BE NOTICED

[Hunton Andrews Kurth LLP](#)

2200 Pennsylvania Avenue, N.W.
Washington , DC 20037

USA

202-955-1500

Fax: 202-778-2201

Email: Bbrownell@huntonak.Com

[George P. Sibley , III](#)

ATTORNEY TO BE NOTICED

[Hunton Andrews Kurth LLP](#)

951 E. Byrd Street
Richmond , VA 23219

USA

804-788-8262

Fax: 804-788-8218

Email: Gsibley@huntonak.Com

[Harry M. Johnson , III](#)

ATTORNEY TO BE NOTICED

[Hunton Andrews Kurth LLP](#)

951 E. Byrd Street
Richmond , VA 23219

USA

804-788-8200

Fax: 804-788-8218

Email: Pjohnson@huntonak.Com

[James W Rubin](#)

ATTORNEY TO BE NOTICED

[Term: 07/25/2011]

[Hunton & Williams LLP](#)

1900 K Street
Washington , DC 20006

USA

202-955-1500

Fax: 202-778-2201

[Lucinda M. Langworthy](#)

ATTORNEY TO BE NOTICED

[Hunton Andrews Kurth LLP](#)

2200 Pennsylvania Avenue, N.W.
Washington , DC 20037

USA

202-955-1525

Fax: 202-828-3783

Email: Clangworthy@huntonak.Com

[Makram B Jaber](#)

ATTORNEY TO BE NOTICED

[Hunton Andrews Kurth LLP](#)

2200 Pennsylvania Avenue, N.W.
Washington , DC 20037

USA

202-955-1500

Fax: 202-778-2201

Email: Mjaber@huntonak.Com

Detroit Edison Company
Defendant

[Mark B Bierbower](#)
ATTORNEY TO BE NOTICED
[Hunton Andrews Kurth LLP](#)
2200 Pennsylvania Avenue, N.W.
Washington , DC 20037
USA
202-955-1500
Fax: 202-778-2201
Email: Mbierbower@huntonak.Com

[Matthew J. Lund](#)
ATTORNEY TO BE NOTICED
[Pepper Hamilton LLP](#)
4000 Town Center 18th Floor
Southfield , MI 48075
USA
248-359-7370
Fax: 248-359-7700
Email: Lundm@pepperlaw.Com

[Michael J. Solo](#)
ATTORNEY TO BE NOTICED
[DTE Energy Company](#)
One Energy Plaza
Detroit , MI 48226
USA
313-235-9512
Fax: 313-235-0114
Email: Solom@dteenergy.Com

[Andrea E. Hayden](#)
ATTORNEY TO BE NOTICED
[DTE Energy](#)
Office Of The General Counsel
One Energy Plaza
Wcb 688
Detroit , MI 48226
USA
313-235-3813
Fax: 313-235-0115
Email: Haydena@dteenergy.Com

[Brent A. Rosser](#)
ATTORNEY TO BE NOTICED
[Hunton Andrews Kurth LLP](#)
101 South Tryon Street Bank Of America Plaza Suite 3500
Charlotte , NC 28280
USA
704-378-4700
Fax: 704-378-4890
Email: Brosser@huntonak.Com

[F. William Brownell](#)
ATTORNEY TO BE NOTICED
[Hunton Andrews Kurth LLP](#)
2200 Pennsylvania Avenue, N.W.
Washington , DC 20037
USA
202-955-1500
Fax: 202-778-2201
Email: Bbrownell@huntonak.Com

[George P. Sibley , III](#)
ATTORNEY TO BE NOTICED
[Hunton Andrews Kurth LLP](#)
951 E. Byrd Street
Richmond , VA 23219
USA
804-788-8262
Fax: 804-788-8218
Email: Gsibley@huntonak.Com

[Harry M. Johnson , III](#)
ATTORNEY TO BE NOTICED
[Hunton Andrews Kurth LLP](#)
951 E. Byrd Street
Richmond , VA 23219
USA
804-788-8200
Fax: 804-788-8218
Email: Pjohnson@huntonak.Com

[James W Rubin](#)
ATTORNEY TO BE NOTICED
[Term: 07/25/2011]
[Hunton & Williams LLP](#)
1900 K Street
Washington , DC 20006
USA
202-955-1500
Fax: 202-778-2201

[Lucinda M. Langworthy](#)
ATTORNEY TO BE NOTICED
[Hunton Andrews Kurth LLP](#)
2200 Pennsylvania Avenue, N.W.
Washington , DC 20037
USA
202-955-1525
Fax: 202-828-3783
Email: Clangworthy@huntonak.Com

[Makram B Jaber](#)
ATTORNEY TO BE NOTICED
[Hunton Andrews Kurth LLP](#)
2200 Pennsylvania Avenue, N.W.
Washington , DC 20037
USA
202-955-1500
Fax: 202-778-2201
Email: Mjaber@huntonak.Com

[Mark B Bierbower](#)
ATTORNEY TO BE NOTICED
[Hunton Andrews Kurth LLP](#)
2200 Pennsylvania Avenue, N.W.
Washington , DC 20037
USA
202-955-1500
Fax: 202-778-2201
Email: Mbierbower@huntonak.Com

[Matthew J. Lund](#)
ATTORNEY TO BE NOTICED
[Pepper Hamilton LLP](#)
4000 Town Center 18th Floor
Southfield , MI 48075
USA
248-359-7370
Fax: 248-359-7700
Email: Lundm@pepperlaw.Com

[Michael J. Solo](#)
ATTORNEY TO BE NOTICED
[DTE Energy Company](#)
One Energy Plaza
Detroit , MI 48226
USA
313-235-9512
Fax: 313-235-0114
Email: Solom@dteenergy.Com

08/05/2010 1 COMPLAINT filed by United States against DTE Energy, Detroit Edison Company. No summons requested. County of 1st Plaintiff: USA - County Where Action Arose: Monroe - County of 1st Defendant: Wayne. [Previously dismissed case: No] [Possible companion case (s): None] (Benson, Thomas) (Entered: 08/05/2010)

08/05/2010 A United States Magistrate Judge of this Court is available to conduct all proceedings in this civil action in accordance with 28 U.S.C. 636c and FRCP 73. The Notice, Consent, and Reference of a Civil Action to a Magistrate Judge form is available for download at <http://www.mied.uscourts.gov> (DPer) (Entered: 08/05/2010)

08/06/2010 2 Ex Parte MOTION for Leave to File Excess Pages by United States. (Christensen, Ellen) (Entered: 08/06/2010)

08/06/2010 3 Ex Parte MOTION for Leave to File An Exhibit In The Traditional Manner by United States. (Christensen, Ellen) (Entered: 08/06/2010)

08/06/2010 4 Ex Parte MOTION for Leave to File An Exhibit In The Traditional Manner by United States. (Christensen, Ellen) (Entered: 08/06/2010)

08/06/2010 5 ORDER granting 3 Motion for Leave to File in traditional manner. Signed by District Judge Bernard A Friedman. (CMul) (Entered: 08/06/2010)

08/06/2010 6 ORDER granting 4 Motion for Leave to File sealed matter. Signed by District Judge Bernard A Friedman. (CMul) (Entered: 08/06/2010)

08/06/2010 7 ORDER granting 2 Motion for Leave to File Excess Pages. Signed by District Judge Bernard A Friedman. (CMul) (Entered: 08/06/2010)

08/06/2010 8 MOTION for Preliminary Injunction by United States. (Attachments: # 1 Index of Exhibits, # 2 Exhibit 1 - Chinkin Declaration, # 3 Exhibit 2 - Chatfield Declaration, # 4 Exhibit 2A - Inspection Notes, # 5 Exhibit 2B - December 2009 DTE Press Release, # 6 Exhibit 2C - March 2010 DTE Letter, # 7 Exhibit 2D - April 2010 Newspaper Article, # 8 Exhibit 2E - June 2010 Notice of Violation, # 9 Exhibit 2G - June 2010 DTE Letter, # 10 Exhibit 2H - Fessler Testimony, # 11 Exhibit 2I - May 2010 EPA Letter, # 12 Exhibit 2J - June 2010 EPA Letter, # 13 Exhibit 3 - Sahu Declaration, # 14 Exhibit 3A - November 2009 DTE Press Release, # 15 Exhibit 4 - Detroit Edison Applicability Determination, # 16 Exhibit 5 - Koppe Declaration, # 17 Exhibit 6 - Hekking Declaration, # 18 Exhibit 7 - Clay Memo, # 19 Exhibit 8 - Biewald Declaration, # 20 Exhibit 9 - Cinergy Jury Instructions, # 21 Exhibit 10 - Adams Declaration, # 22 Exhibit 11 - Kahal Declaration, # 23 Exhibit 12 - Schwartz Declaration) (Benson, Thomas) (Entered: 08/06/2010)

08/10/2010 9 NOTICE by United States re 8 MOTION for Preliminary Injunction OF FILING EXHIBIT IN THE TRADITIONAL MANNER - APPENDIX F, EXHIBIT1 (CD-ROM) (Christensen, Ellen) (Entered: 08/10/2010)

08/10/2010 10 NOTICE by United States re 8 MOTION for Preliminary Injunction OF FILING EXHIBIT IN THE TRADITIONAL MANNER - EXHIBIT 2-F (SEALED EXCERPTS OF) (Christensen, Ellen) (Entered: 08/10/2010)

08/17/2010 11 NOTICE of Appearance by Michael J. Solo on behalf of All Defendants. (Solo, Michael) (Entered: 08/17/2010)

08/18/2010 12 NOTICE of hearing on 8 MOTION for Preliminary Injunction. Motion Hearing set for Wednesday, 10/13/2010 02:00 PM before District Judge Bernard A Friedman. (CMul) (Entered: 08/18/2010)

08/18/2010 13 NOTICE TO APPEAR: Case Management Status Conference set for Wednesday, 8/25/2010 11:00 AM before District Judge Bernard A Friedman (CMul) (Entered: 08/18/2010)

08/18/2010 14 NOTICE of Appearance by Matthew J. Lund on behalf of DTE Energy, Detroit Edison Company. (Lund, Matthew) (Entered: 08/18/2010)

08/18/2010 15 MOTION to Strike 8 MOTION for Preliminary Injunction by DTE Energy, Detroit Edison Company. (Attachments: # 1 Index of Exhibits, # 2 Exhibit A-Declaration of Skiles W. Boyd, # 3 Exhibit B-March 12, 2010 letter, # 4 Exhibit C-May 28, 2010 letter, # 5 Exhibit D-June 1, 2010 letter, # 6 Exhibit E-June 2, 2010 letter, # 7 Exhibit F-June 3, 2010 letter, # 8 Exhibit G-June 4, 2010 NOV, # 9 Exhibit H-June 8, 2010 letter, # 10 Exhibit I-Amicus Brief, # 11 Exhibit J-February 23, 2004 Order, # 12 Exhibit K-ABA Transcript, # 13 Exhibit L-EPA Response to Request for Admissions, # 14 Exhibit M-August 4, 2003 EPA Opposition, # 15 Exhibit N-October 4, 2004 Reply, # 16 Exhibit O-EPA Motion to Vacate dated October 4, 2007, # 17 Exhibit P-EPA Reply dated September 5, 2003, # 18 Exhibit Q-Joint Status Report, # 19 Exhibit R-Joint Status Report) (Lund, Matthew) (Entered: 08/18/2010)

08/18/2010 16 MOTION to Stay re 8 MOTION for Preliminary Injunction or, in the Alternative, for Extension of Time to Respond to Plaintiff's Motion for Preliminary Injunction and for Leave to File a 36-Page Response Brief by DTE Energy, Detroit Edison Company. (Attachments: # 1 Exhibit A-Plaintiffs' Supplemental Statement Regarding Joint Rule 26(f) Report and Proposed Scheduling and Case Management Order) (Lund, Matthew) (Entered: 08/18/2010)

08/18/2010 Set Hearings: Telephone Conference set for 10/13/2010 01:00 PM before District Judge Bernard A Friedman (CMul) (Entered: 10/06/2010)

08/19/2010	17	NOTICE of Appearance by Makram B Jaber - NOT SWORN on behalf of DTE Energy, Detroit Edison Company. (Jaber - NOT SWORN, Makram) (Entered: 08/19/2010)
08/19/2010	18	NOTICE of Appearance by James W Rubin - NOT SWORN on behalf of DTE Energy, Detroit Edison Company. (Rubin - NOT SWORN, James) (Entered: 08/19/2010)
08/20/2010	19	NOTICE of Appearance by Mark B Bierbower - NOT SWORN on behalf of DTE Energy, Detroit Edison Company. (Bierbower - NOT SWORN, Mark) (Entered: 08/20/2010)
08/20/2010	20	STATEMENT of DISCLOSURE of CORPORATE AFFILIATIONS and FINANCIAL INTEREST by DTE Energy (Lund, Matthew) (Entered: 08/20/2010)
08/20/2010	21	STATEMENT of DISCLOSURE of CORPORATE AFFILIATIONS and FINANCIAL INTEREST by Detroit Edison Company identifying Corporate Parent DTE Energy Company for Detroit Edison Company. (Lund, Matthew) (Entered: 08/20/2010)
08/23/2010	22	NOTICE of Appearance by F. William Brownell - NOT SWORN on behalf of DTE Energy, Detroit Edison Company. (Brownell - NOT SWORN, F.) (Entered: 08/23/2010)
08/23/2010	23	RESPONSE to 16 MOTION to Stay re 8 MOTION for Preliminary Injunction or, in the Alternative, for Extension of Time to Respond to Plaintiff's Motion for Preliminary Injunction and for Leave to File a 36-Page Response Brief MOTION to Stay re 8 MOTION for Preliminary Injunction or, in the Alternative, for Extension of Time to Respond to Plaintiff's Motion for Preliminary Injunction and for Leave to File a 36-Page Response Brief, 15 MOTION to Strike 8 MOTION for Preliminary Injunction filed by United States. (Attachments: # 1 Index of Exhibits, # 2 Exhibit Ex. A - Declaration of Thomas A. Benson, # 3 Exhibit Ex. B - July 1, 2010 EPA Letter to DTE) (Benson, Thomas) (Entered: 08/23/2010)
08/24/2010	24	MOTION to Amend/Correct 8 MOTION for Preliminary Injunction by Filing Corrected Exhibit 12 (Unopposed Motion) by United States. (Attachments: # 1 Exhibit Corrected Exhibit 12 to Preliminary Injunction Motion) (Benson, Thomas) (Entered: 08/24/2010)
08/24/2010	25	NOTICE of Appearance by Brent A. Rosser - NOT SWORN on behalf of DTE Energy, Detroit Edison Company. (Rosser - NOT SWORN, Brent) (Entered: 08/24/2010)
08/25/2010	26	AMENDED NOTICE of hearing on 8 MOTION for Preliminary Injunction. Responses due by 11/4/2010 Replies due by 11/18/2010 Motion Hearing set for Wednesday, 1/19/2011 09:00 AM before District Judge Bernard A Friedman. (CMul) (Entered: 08/25/2010)
08/25/2010	27	ORDER granting 24 Unopposed Motion to Amend/Correct exhibit. Signed by District Judge Bernard A Friedman. (CMul) (Entered: 08/25/2010)
08/25/2010		Minute Entry - Status/Scheduling Conference held on 8/25/2010 before District Judge Bernard A Friedman. (CMul) (Entered: 08/25/2010)
08/30/2010	28	(WRONG IMAGE) ORDER granting 16 Motion to Stay or in the alternative extension of time to file a response. Signed by District Judge Bernard A Friedman. (CMul) (Entered: 08/30/2010)
08/30/2010	29	ORDER granting 16 MOTION to Stay or, in the Alternative, for Extension of Time to Respond to Plaintiff's Motion for Preliminary Injunction filed by Detroit Edison Company, DTE Energy. Signed by District Judge Bernard A Friedman. (CMul) (Entered: 08/30/2010)
08/30/2010	30	NOTICE of Correction re 28 Order on Motion to Stay. (CMul) (Entered: 08/30/2010)
08/30/2010	31	WAIVER OF SERVICE Returned Executed. DTE Energy waiver sent on 8/5/2010, answer due 10/4/2010. (Benson, Thomas) (Entered: 08/30/2010)
08/30/2010	32	WAIVER OF SERVICE Returned Executed. Detroit Edison Company waiver sent on 8/5/2010, answer due 10/4/2010. (Benson, Thomas) (Entered: 08/30/2010)
09/07/2010	33	REPLY to Response re 15 MOTION to Strike 8 MOTION for Preliminary Injunction filed by DTE Energy, Detroit Edison Company. (Attachments: # 1 Exhibit Verdict Form, U.S. v. Cinergy (S.D. Ind. May 22, 2008)) (Brownell, F.) (Entered: 09/07/2010)
09/28/2010	34	Joint MOTION to Intervene as Plaintiffs by Sierra Club, Natural Resources Defense Council. (Issod, Andrea) (Entered: 09/28/2010)
09/28/2010	35	INTERVENOR COMPLAINT filed by Natural Resources Defense Council, Sierra Club against DTE Energy, Detroit Edison Company. (Issod, Andrea) Modified on 9/29/2010 (DWor). [PROPOSED INTERVENOR COMPLAINT] (Entered: 09/28/2010)
09/29/2010	36	ATTORNEY SUBSTITUTION for Natural Resources Defense Council, Sierra Club: Holly D. Bressett - NOT SWORN added. Attorney Andrea S. Issod terminated. (Bressett - NOT SWORN, Holly) (Entered: 09/29/2010)
10/04/2010	37	ANSWER to Complaint by DTE Energy, Detroit Edison Company. (Brownell, F.) (Entered: 10/04/2010)
10/05/2010	38	NOTICE of hearing on 34 Joint MOTION to Intervene as Plaintiffs. Motion Hearing set for 11/10/2010 02:00 PM before District Judge Bernard A Friedman. (CMul) (Entered: 10/05/2010)

10/05/2010)

- 10/06/2010 39 STIPULATED PROTECTIVE ORDER Signed by District Judge Bernard A Friedman. (CMul) (Entered: 10/06/2010)
- 10/08/2010 40 DISCOVERY plan jointly filed pursuant to Federal Rules of Civil Procedure 26(f) (Benson, Thomas) (Entered: 10/08/2010)
- 10/13/2010 Minute Entry - Status Conference held on 10/13/2010 before District Judge Bernard A Friedman. (Court Reporter Joan Morgan) (CMul) (Entered: 10/14/2010)
- 10/14/2010 41 NOTICE TO APPEAR: Status Conference set for Tuesday, 11/30/2010 11:00 AM before District Judge Bernard A Friedman Regarding facilitation and possible hearing dates. (CMul) (Entered: 10/14/2010)
- 10/22/2010 42 STIPULATION Regarding Claims of Prospective Intervenors by DTE Energy, Detroit Edison Company, Natural Resources Defense Council, Sierra Club (Lund, Matthew) (Entered: 10/22/2010)
- 10/27/2010 43 DISCOVERY plan jointly filed pursuant to Federal Rules of Civil Procedure 26(f) (Bierbower, Mark) (Entered: 10/27/2010)
- 10/27/2010 44 DISCOVERY plan jointly filed pursuant to Federal Rules of Civil Procedure 26(f) (Bierbower, Mark) (Entered: 10/27/2010)
- 11/04/2010 45 Ex Parte MOTION to Seal Exhibits and File in the Traditional Manner by All Defendants. (Rubin - NOT SWORN, James) (Entered: 11/04/2010)
- 11/04/2010 46 RESPONSE to 8 MOTION for Preliminary Injunction Opposition filed by All Defendants. (Attachments: # 1 Index of Exhibits Index of Exhibits, # 2 Exhibit Exhibit 1: Wolff Declaration, # 3 Exhibit Exhibit 2: Campbell Declaration, # 4 Exhibit Exhibit 3: Boyd Declaration, # 5 Exhibit Exhibit 4: Rogers Declaration, # 6 Exhibit Exhibit 5: Letter from Brooks to Solo 5/28/10, # 7 Exhibit Exhibit 6: Letter from Brooks to Solo 6/2/10, # 8 Exhibit Exhibit 7: Letter from Solo to Palermo 6/3/10, # 9 Exhibit Exhibit 8: EPA NOV, # 10 Exhibit Exhibit 9: Golden Declaration, # 11 Exhibit Exhibit 10: King Declaration, # 12 Exhibit Exhibit 11: Koppe Deposition Excerpt 11/30/05, # 13 Exhibit Exhibit 12: Verdict Form, # 14 Exhibit Exhibit 13: Moolgavkar Declaration, # 15 Exhibit Exhibit 14: Hayes Declaration, # 16 Exhibit Exhibit 15: Morris Declaration) (Brownell, F.) (Entered: 11/04/2010)
- 11/04/2010 47 NOTICE by All Defendants re 46 Response to Motion,,, of Filing Exhibits in the Traditional Manner, Appendix B to Attachment A to Exhibit 9 (Golden), Appendix C to Exhibit 10 (King) (Brownell, F.) (Entered: 11/04/2010)
- 11/05/2010 48 EXHIBIT S A & B re 45 Ex Parte MOTION to Seal Exhibits and File in the Traditional Manner by All Defendants (Rubin - NOT SWORN, James) (Entered: 11/05/2010)
- 11/09/2010 49 TEXT ORDER granting 45 Motion to Seal. Signed by District Judge Bernard A Friedman. (CMul) (Entered: 11/09/2010)
- 11/09/2010 50 ORDER re 48 Exhibit filed by Detroit Edison Company, DTE Energy. Signed by District Judge Bernard A Friedman. (CMul) (Entered: 11/09/2010)
- 11/12/2010 51 MOTION for Leave to File Supplemental Declaration (Errata) and to File Exhibit Under Seal and in the Traditional Manner by All Defendants. (Attachments: # 1 Exhibit Supplement to Exhibit 10 to Opposition to Plaintiff's Motion for Preliminary Injunction) (Brownell, F.) (Entered: 11/12/2010)
- 11/15/2010 52 Sealed Matter (KCas) (Entered: 11/16/2010)
- 11/18/2010 53 ORDER granting 51 Motion for Leave to File. Signed by District Judge Bernard A Friedman. (CMul) (Entered: 11/18/2010)
- 11/18/2010 54 Ex Parte MOTION for Leave to File Excess Pages by United States. (Christensen, Ellen) (Entered: 11/18/2010)
- 11/18/2010 55 MOTION for Leave to File Exhibit Under Seal and in the Traditional Manner by United States. (Christensen, Ellen) (Entered: 11/18/2010)
- 11/18/2010 56 MOTION for Leave to File Exhibit Under Seal and in the Traditional Manner by United States. (Christensen, Ellen) (Entered: 11/18/2010)
- 11/18/2010 57 RESPONSE to 54 Ex Parte MOTION for Leave to File Excess Pages (Response in Opposition) filed by All Defendants. (Brownell, F.) (Entered: 11/18/2010)
- 11/18/2010 58 REPLY to Response re 8 MOTION for Preliminary Injunction filed by United States. (Attachments: # 1 Index of Exhibits, # 2 Appendix B: Sierra Club Slip Op, # 3 Exhibit 13: Chatfield Declaration, # 4 Exhibit 13-A: Monroe Permit Application, # 5 Exhibit 13-B: Michigan NSR Program Review, # 6 Exhibit 13-C: Monroe Permit, # 7 Exhibit 13-D: DTE Presentation (Part 1 of 2), # 8 Document Continuation 13-D: DTE Presentation (Part 2 of 2), # 9 Exhibit 14: Cinergy Special Verdict Form, # 10 Exhibit 15: Koppe Declaration, # 11 Exhibit 16: Biewald Declaration, # 12 Exhibit 17: Adams Declaration, # 13 Exhibit 18: Kahal Declaration, # 14 Exhibit 19: Sahu Declaration, # 15 Exhibit 20: Schwartz Declaration, # 16 Exhibit 21: Chinkin Declaration) (Benson, Thomas) (Entered: 11/18/2010)

11/18/2010	59	MOTION for Leave to File Exhibits under Seal and to Withdraw Prior Motions by United States. (Benson, Thomas) (Entered: 11/18/2010)
11/18/2010	60	SEALED EXHIBIT 13-E Economizer Presentation re 58 Reply to Response to Motion,,, 59 MOTION for Leave to File Exhibits under Seal and to Withdraw Prior Motions by United States. (Benson, Thomas) (Entered: 11/18/2010)
11/18/2010	61	SEALED EXHIBIT 13-F Reheater Presentation re 58 Reply to Response to Motion,,, 59 MOTION for Leave to File Exhibits under Seal and to Withdraw Prior Motions by United States. (Benson, Thomas) (Entered: 11/18/2010)
11/22/2010	62	ORDER granting 54 Motion for Leave to File Excess Pages. Signed by District Judge Bernard A Friedman. (CMul) (Entered: 11/22/2010)
11/22/2010	63	ORDER granting 59 Motion for Leave to File under seal and withdraw motions. Signed by District Judge Bernard A Friedman. (CMul) (Entered: 11/22/2010)
11/23/2010	64	ORDER granting 34 Joint MOTION to Intervene as Plaintiffs filed by Natural Resources Defense Council and Sierra Club. Signed by District Judge Bernard A Friedman. (CMul) (Entered: 11/23/2010)
11/23/2010	65	NOTICE of Appearance by Justin Savage on behalf of United States. (Savage, Justin) (Entered: 11/23/2010)
11/24/2010	66	MOTION for Protective Order and Brief in Support by All Defendants. (Attachments: # 1 Index of Exhibits Index of Exhibits, # 2 Exhibit Exhibit A: E-mail from Benson to Bierbower 8/17/10, # 3 Exhibit Exhibit B: EPA's First Set of Discovery, # 4 Exhibit Exhibit C: Letter from Benson to Bierbower 11/5/10, # 5 Exhibit Exhibit D: Detroit Edison's Objections & Responses to EPA's First Set of Discovery, # 6 Exhibit Exhibit E: Letter from Benson to Bierbower 11/15/10, # 7 Exhibit Exhibit F: Subpoenas and Deposition Notices, # 8 Exhibit Exhibit G: Detroit Edison's First Set of Interrogatories and Requests for Production) (Brownell, F.) (Entered: 11/24/2010)
11/30/2010	67	NOTICE of Appearance by Kristin M Furrie on behalf of United States. (Furrie, Kristin) (Entered: 11/30/2010)
11/30/2010		Minute Entry - Telephone Conference held on 11/30/2010, Set Hearings: (Telephone Conference set for 1/10/2011 02:00 PM before District Judge Bernard A Friedman) before District Judge Bernard A Friedman. (Court Reporter Carol Sapala) (CMul) (Entered: 11/30/2010)
12/02/2010	68	RESPONSE to 66 MOTION for Protective Order and Brief in Support filed by United States. (Furrie, Kristin) (Entered: 12/02/2010)
12/10/2010	69	REPLY to Response re 66 MOTION for Protective Order and Brief in Support filed by All Defendants. (Attachments: # 1 Exhibit Exhibit A: Excerpts from Plaintiffs' Proposed Conclusions of Law (Remedy Phase), filed in U.S. v. Cinergy (S.D. Ind.)) (Brownell, F.) (Entered: 12/10/2010)
12/27/2010	70	ORDER granting 66 Defendants' Motion for Protective Order. Signed by District Judge Bernard A Friedman. (CMul) (Entered: 12/27/2010)
01/06/2011	71	STIPULATION re 39 Protective Order by Natural Resources Defense Council, Sierra Club (Bressett - NOT SWORN, Holly) (Entered: 01/06/2011)
01/10/2011	72	ERRATA Sheet re: 58 Reply to Response to Motion,,, filed by United States. by United States (Furrie, Kristin) (Entered: 01/10/2011)
01/10/2011		Minute Entry - Status Telephone Conference held on 1/10/2011 before District Judge Bernard A Friedman. (FMos) (Entered: 01/11/2011)
01/11/2011	73	ORDER. Signed by District Judge Bernard A Friedman. (FMos) (Entered: 01/11/2011)
01/12/2011	74	NOTICE of Appearance by Lucinda M. Langworthy - NOT SWORN on behalf of DTE Energy, Detroit Edison Company. (Langworthy - NOT SWORN, Lucinda) (Entered: 01/12/2011)
01/14/2011	75	ORDER allowing Defendant's to bring two laptops into the Courthouse. Signed by District Judge Bernard A Friedman. (CMul) (Entered: 01/14/2011)
01/19/2011		Minute Entry - Motion Hearing held on 1/19/2011 re 8 MOTION for Preliminary Injunction filed by United States before District Judge Bernard A Friedman. Disposition: held in abeyance pending expedited trial(Court Reporter Joan Morgan) (CMul) (Entered: 01/27/2011)
01/19/2011		Minute Entry - Scheduling Conference held on 1/19/2011 before District Judge Bernard A Friedman. (CMul) (Entered: 01/27/2011)
01/27/2011	76	SCHEDULING ORDER: Final Pretrial Tele-Conference set for 5/3/2011 01:00 PM to be initiated by Defendants; Jury Selection, if necessary set for 5/10/2011 at 9:00 a.m. and Jury/Bench Trial set for 5/11/2011 09:00 AM before District Judge Bernard A Friedman Signed by District Judge Bernard A Friedman. (Refer to image for additional dates) (CMul) (Entered: 01/27/2011)
01/28/2011	77	NOTICE of Appearance by James A Lofton on behalf of United States. (Lofton, James) (Entered: 01/28/2011)

01/28/2011	78	ORDER denying 8 Motion for Preliminary Injunction. Signed by District Judge Bernard A Friedman. (CMul) (Entered: 01/28/2011)
02/17/2011		Set Deadlines/Hearings: Telephone Conference set for 2/22/2011 at 1:00 PM before District Judge Bernard A Friedman (FMos) (Entered: 02/17/2011)
02/22/2011		Minute Entry - Telephone Conference held on 2/22/2011 before District Judge Bernard A Friedman. Disposition: held(Court Reporter: Joan Morgan) (DOpa) (Entered: 02/22/2011)
03/01/2011	79	SCHEDULING ORDER: Substantive Motion Cut-off set for 6/1/2011 Final Pretrial Conference set for 9/6/2011 01:00 PM before District Judge Bernard A. Friedman Bench Trial set for 9/12/2011 09:00 AM before District Judge Bernard A. Friedman Signed by District Judge Bernard A. Friedman. (Refer to image for additional dates) (CMul) (Entered: 03/01/2011)
03/21/2011	80	Joint MOTION to Amend/Correct Scheduling Order by All Parties. (Rosser, Brent) (Entered: 03/21/2011)
03/23/2011	81	MOTION for Protective Order by DTE Energy, Detroit Edison Company. (Attachments: # 1 Index of Exhibits, # 2 Exhibit 1 - Notice of Violation, # 3 Exhibit 2 - Monroe Power Plant Unit #2 Periodic Outage Preparation Status Report, # 4 Exhibit 3 - Excerpts of January 19, 2011 Hearing Transcript, # 5 Exhibit 4(a) - Plaintiff's First Set of Interrogatories, # 6 Exhibit 4(b) - Plaintiff's First Set of Document Requests, # 7 Exhibit 5 - Letter from Thomas Benson, # 8 Exhibit 6 - Letter from Brent Rosser, # 9 Exhibit 7 - EKPC Order, # 10 Exhibit 8 - Notice of Intent (TVA), # 11 Exhibit 9 - Notice of Violation (TVA), # 12 Exhibit 10 - Cinergy Order, # 13 Exhibit 11 - Glossary of Acronyms Referenced in Brief) (Brownell, F.) (Entered: 03/23/2011)
03/23/2011	82	AMENDED SCHEDULING ORDER re 80 Joint Motion: Final Pretrial Conference set for 9/6/2011 01:00 PM before District Judge Bernard A. Friedman. Bench Trial set for 9/12/2011 09:00 AM before District Judge Bernard A. Friedman. Signed by District Judge Bernard A. Friedman. (Refer to image for additional dates) (DOpa) (Entered: 03/24/2011)
03/30/2011	83	NOTICE of hearing on 81 MOTION for Protective Order. Motion Hearing set for Wednesday, 4/20/2011 02:00 PM before District Judge Bernard A. Friedman. Parties may arrange to participate by telephone. (CMul) (Entered: 03/30/2011)
04/06/2011	84	NOTICE of Appearance by Harry M. Johnson - NOT SWORN on behalf of DTE Energy, Detroit Edison Company. (Johnson - NOT SWORN, Harry) (Entered: 04/06/2011)
04/06/2011	85	RESPONSE to 81 MOTION for Protective Order filed by United States. (Attachments: # 1 Index of Exhibits, # 2 Ex. 1, June 1, 2010 Solo Letter, # 3 Ex. 2, June 15, 2010 Solo Letter, # 4 Ex. 3, February 15, 1989 Clay Letter, # 5 Ex. 4, November 6, 1987 Howekamp Letter, # 6 Ex. 5, Preliminary Injunction Hearing Transcript Excerpts, # 7 Ex. 6, DTE Preliminary Injunction Hearing Demonstrative, # 8 Ex. 7, January 31, 2011 Bierbower Letter) (Benson, Thomas) (Entered: 04/06/2011)
04/07/2011	86	ATTORNEY APPEARANCE: George P. Sibley - NOT SWORN appearing on behalf of DTE Energy, Detroit Edison Company (Sibley - NOT SWORN, George) (Entered: 04/07/2011)
04/08/2011	87	MOTION to Compel Plaintiff's Compliance with Rules 33 and 34 of the Federal Rules of Civil Procedure by DTE Energy, Detroit Edison Company. (Attachments: # 1 Index of Exhibits Index of Exhibits, # 2 Exhibit Ex. A: U.S.' First Set of Document Requests, # 3 Exhibit Ex. B: Hearing Transcript Excerpts 1/19/01, # 4 Exhibit Ex. C: Defendants' First Set of Interrogatories, # 5 Exhibit Ex. D: Defendants' First Set of Requests for Production, # 6 Exhibit Ex. E: Furrie Letter to Bierbower 2/10/11, # 7 Exhibit Ex. F: Smith Letter to Furrie 2/23/11, # 8 Exhibit Ex. G: U.S.' Responses and Objections to Defendants' First Set of Requests for Production, # 9 Exhibit Ex. H: U.S.' Responses and Objections to Defendants' First Set of Interrogatories, # 10 Exhibit Ex. I: First Production Inventory, # 11 Exhibit Ex. J: Second Production Inventory, # 12 Exhibit Ex. K: Walinskas Letter to Smith 3/14/11, # 13 Exhibit Ex. L: Rosser Letter to Benson 3/18/11, # 14 Exhibit Ex. M: Benson Letter to Rosser 3/24/11, # 15 Exhibit Ex. N: Furrie Letter to Smith 2/28/11, # 16 Exhibit Ex. O: Rosser Letter to Benson 3/31/11, # 17 Exhibit Ex. P: Furrie Letter to Rosser 4/4/11, # 18 Exhibit Ex. Q: Duke Energy Order 12/13/01, # 19 Exhibit Ex. R: Duke Energy Order 2/5/02, # 20 Exhibit Ex. S: Illinois Power Order 10/23/01, # 21 Exhibit Ex. T: U.S.' First Set of Interrogatories, # 22 Exhibit Ex. U: Furrie Email to Rosser et al. 4/6/11, # 23 Exhibit Ex. V: Illinois Power Order 1/10/01) (Rosser, Brent) (Entered: 04/08/2011)
04/08/2011	88	MOTION to Expedite Briefing and Consideration of Motion to Compel Plaintiffs' Compliance with Rules 33 and 34 of the Federal Rules of Civil Procedure by DTE Energy, Detroit Edison Company. (Rosser, Brent) (Entered: 04/08/2011)
04/11/2011	89	RESPONSE to 88 MOTION to Expedite Briefing and Consideration of Motion to Compel Plaintiffs' Compliance with Rules 33 and 34 of the Federal Rules of Civil Procedure filed by United States. (Furrie, Kristin) (Entered: 04/11/2011)
04/13/2011	90	REPLY to Response re 88 MOTION to Expedite Briefing and Consideration of Motion to Compel Plaintiffs' Compliance with Rules 33 and 34 of the Federal Rules of Civil Procedure filed by DTE Energy, Detroit Edison Company. (Rosser, Brent) (Entered: 04/13/2011)
04/13/2011	91	STIPULATION re 71 Stipulation, 39 Protective Order Stipulated Disclosure Agreement Regarding Section 114 Documents by DTE Energy, Detroit Edison Company, Natural Resources Defense Council, Sierra Club (Rosser, Brent) (Entered: 04/13/2011)

04/15/2011	92	REPLY to Response re 81 MOTION for Protective Order filed by All Defendants. (Attachments: # 1 Exhibit 12 - 1993 EPA Memo) (Sibley - NOT SWORN, George) (Entered: 04/15/2011)
04/18/2011		TEXT-ONLY ORDER granting 88 MOTION to Expedite Briefing and Consideration of Motion to Compel Plaintiffs' Compliance with Rules 33 and 34 of the Federal Rules of Civil Procedure by DTE Energy, Detroit Edison Company. Signed by District Judge Bernard A. Friedman. (SJa) (Entered: 04/18/2011)
04/18/2011	93	NOTICE of hearing on 81 MOTION for Protective Order and 87 MOTION to Compel Plaintiff's Compliance with Rules 33 and 34 of the Federal Rules of Civil Procedure. Motion Hearing set for 5/3/2011 01:45 PM before District Judge Bernard A. Friedman. (SJa) (Entered: 04/18/2011)
04/22/2011	94	MOTION for Protective Order by United States. (Furrie, Kristin) (Entered: 04/22/2011)
04/22/2011	95	RESPONSE to 87 MOTION to Compel Plaintiff's Compliance with Rules 33 and 34 of the Federal Rules of Civil Procedure filed by United States. (Attachments: # 1 Index of Exhibits, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 2-A, # 5 Exhibit 2-B, # 6 Exhibit 2-C, # 7 Exhibit 2-D, # 8 Exhibit 2-E, # 9 Exhibit 2-F, # 10 Exhibit 2-G Part 1, # 11 Document Continuation 2-G Part 2, # 12 Exhibit 2-H, # 13 Exhibit 2- I, # 14 Exhibit 2-J, # 15 Exhibit 2-K, # 16 Exhibit 2-L, # 17 Exhibit 3, # 18 Exhibit 4, # 19 Exhibit 5, # 20 Exhibit 6, # 21 Exhibit 7, # 22 Exhibit 8, # 23 Exhibit 9, # 24 Exhibit 10, # 25 Exhibit 11) (Furrie, Kristin) (Entered: 04/22/2011)
04/22/2011	96	NOTICE of Appearance by James W. Beers, Jr on behalf of United States. (Beers, James) (Entered: 04/22/2011)
04/25/2011	97	NOTICE of Hearing on 94 MOTION for Protective Order, 81 MOTION for Protective Order, 87 MOTION to Compel Plaintiff's Compliance with Rules 33 and 34 of the Federal Rules of Civil Procedure. Motion Hearing set for 5/3/2011 01:45 PM before District Judge Bernard A. Friedman. (SJa) (Entered: 04/25/2011)
04/29/2011	98	Ex Parte MOTION for Leave to File Exhibits in the Traditional Manner by All Defendants. (Johnson - NOT SWORN, Harry) (Entered: 04/29/2011)
04/29/2011	99	REPLY to Response re 87 MOTION to Compel Plaintiff's Compliance with Rules 33 and 34 of the Federal Rules of Civil Procedure filed by All Defendants. (Attachments: # 1 Index of Exhibits, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F (Placeholder for CD-ROM to be filed traditionally if leave granted), # 8 Exhibit G (Placeholder for CD-ROM to be filed traditionally if leave granted)) (Johnson - NOT SWORN, Harry) (Entered: 04/29/2011)
04/29/2011	100	RESPONSE to 94 MOTION for Protective Order filed by DTE Energy, Detroit Edison Company. (Attachments: # 1 Index of Exhibits, # 2 Exhibit A - US Opposition to Def. Mot. to Compel Disc. (Illinois Power), # 3 Exhibit B - US Response to EKPC Motion for Part. Summ. Judgment (EKPC)) (Rosser, Brent) (Entered: 04/29/2011)
05/02/2011	101	ORDER granting 98 Ex Parte Motion for Leave to File Exhibits in the Traditional Manner. Signed by District Judge Bernard A. Friedman. (SJa) (Entered: 05/02/2011)
05/02/2011	102	NOTICE by DTE Energy, Detroit Edison Company of Filing Exhibits in the Traditional Manner (Johnson - NOT SWORN, Harry) (Entered: 05/02/2011)
05/03/2011	103	ORDER denying as moot 88 MOTION to Expedite Briefing and Consideration of Motion to Compel Plaintiffs' Compliance with Rules 33 and 34 of the Federal Rules of Civil Procedure filed by Detroit Edison Company, DTE Energy . Signed by District Judge Bernard A. Friedman. (SJa) (Entered: 05/03/2011)
05/03/2011	104	ORDER granting 81 Defendant's Motion for Protective Order. Signed by District Judge Bernard A. Friedman. (SJa) (Entered: 05/03/2011)
05/03/2011	105	ORDER denying defendant's 87 Motion to Compel Plaintiff's Compliance with Rules 33 and 34 of the Federal Rules of Civil Procedure. Signed by District Judge Bernard A. Friedman. (SJa) (Entered: 05/03/2011)
05/03/2011	106	ORDER denying as moot 94 Plaintiff's Motion for Protective Order. Signed by District Judge Bernard A. Friedman. (SJa) (Entered: 05/03/2011)
05/03/2011		Minute Entry - Motion Hearing held on 5/3/2011 re 88 MOTION to Expedite Briefing and Consideration of Motion to Compel Plaintiffs' Compliance with Rules 33 and 34 of the Federal Rules of Civil Procedure filed by Detroit Edison Company, DTE Energy, 94 MOTION for Protective Order filed by United States, 81 MOTION for Protective Order filed by Detroit Edison Company, DTE Energy, 87 MOTION to Compel Plaintiff's Compliance with Rules 33 and 34 of the Federal Rules of Civil Procedure filed by Detroit Edison Company, DTE Energy before District Judge Bernard A. Friedman. (Court Reporter Joan Morgan) (SJa) Modified on 5/6/2011 (CMul). (Entered: 05/04/2011)
06/09/2011	107	MOTION for Summary Judgment by DTE Energy, Detroit Edison Company. (Attachments: # 1 Index of Exhibits Appendix A: Index of Exhibits, # 2 Exhibit Exhibit 1: Boyd Declaration, # 3 Exhibit Exhibit 2: Usitalo Declaration) (Brownell, F.) (Entered: 06/09/2011)
06/23/2011	108	NOTICE of determination on briefs re 107 MOTION for Summary Judgment. (CMul) (Entered: 06/23/2011)

06/29/2011	109	NOTICE of Appearance by Elias L. Quinn on behalf of United States. (Quinn, Elias) (Entered: 06/29/2011)
06/29/2011	110	MOTION for Extension of Time to File Response/Reply to Defendant's Motion for Summary Judgment Based on the 2002 NSR Reform Rules by United States. (Attachments: # 1 Proposed Order) (Quinn, Elias) (Entered: 06/29/2011)
06/30/2011	111	ORDER granting 110 Motion for Extension of Time to File Response/Reply. Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 06/30/2011)
07/07/2011	112	MOTION for Leave to File Brief and Exhibits under Seal (Unopposed Motion) by United States. (Benson, Thomas) (Entered: 07/07/2011)
07/08/2011	113	ORDER Granting 112 Motion for Leave to File. Signed by District Judge Bernard A. Friedman. (DOpa) (Entered: 07/08/2011)
07/08/2011	114	RESPONSE to 107 MOTION for Summary Judgment filed by United States. (Attachments: # 1 Index of Exhibits, # 2 Exhibit Ex. 3 -- Monroe 2 Outage Facts, # 3 Exhibit Ex. 4 -- Fessler Email, # 4 Exhibit Ex. 5 -- Notice Letter, # 5 Exhibit Ex. 6 -- 2005 Notice Letter, # 6 Exhibit Ex. 9 -- NSR TSD Excerpts, # 7 Exhibit Ex. 12 -- Northampton Letter, # 8 Exhibit Ex. 13 -- Columbia Generating) (Benson, Thomas) (Entered: 07/08/2011)
07/08/2011	115	SEALED EXHIBIT re 114 Response to Motion, by United States. (Attachments: # 1 Exhibit Ex. 1 -- Dep. Ex. 92, # 2 Exhibit Ex. 2 -- Monroe 2 Short Form Report, # 3 Exhibit Ex. 7 -- Rugenstein Deposition Excerpts, # 4 Exhibit Ex. 8 -- Boyd 30(b)(6) Deposition Excerpts Vol. 2, # 5 Exhibit Ex. 10 -- Boyd Personal Deposition Excerpts, # 6 Exhibit Ex. 11 -- Boyd 30(b)(6) Deposition Excerpts Vol. 1) (Benson, Thomas) (Entered: 07/08/2011)
07/18/2011	116	MOTION To Establish Correct Legal Standard on the Issue of Routine Maintenance, Repair and Replacement (RMRR) by DTE Energy, Detroit Edison Company. (Attachments: # 1 Index of Exhibits Index of Exhibits, # 2 Exhibit Exhibit 1: S. Rep. No. 91-1196, # 3 Exhibit Exhibit 2: 40 CFR section 60.14(1)(1) (1976), # 4 Exhibit Exhibit 3: WEPCo NSR Applicability Determination (9/9/1988), # 5 Exhibit Exhibit 4: Final WEPCo Determination (10/14/1988), # 6 Exhibit Exhibit 5: Revised WEPCo Determination (2/15/1989), # 7 Exhibit Exhibit 6: GAO Report (1990), # 8 Exhibit Exhibit 7: Tiber Memo (4/10/1990), # 9 Exhibit Exhibit 8: Dingell Letter (10/9/1990), # 10 Exhibit Exhibit 9: Rosenberg Letter (6/19/1991), # 11 Exhibit Exhibit 10: Nichols Letter w/ Attachment (May 1995), # 12 Exhibit Exhibit 11: DOJ Press Release (11/3/1999), # 13 Exhibit Exhibit 12: Alabama Power Order (2/25/2008), # 14 Exhibit Exhibit 13: Declaration of Regina McCarthy (1/31/2011)) (Brownell, F.) (Entered: 07/18/2011)
07/18/2011	117	MOTION for Partial Summary Judgment on the Legal Standards in this Case by United States. (Attachments: # 1 Index of Exhibits, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 3-A, # 6 Exhibit 3-B, # 7 Exhibit 3-C, # 8 Exhibit 3-D, # 9 Exhibit 3-E, # 10 Exhibit 3-F, # 11 Exhibit 3-G, # 12 Exhibit 3-H, # 13 Exhibit 3-I, # 14 Exhibit 3-J, # 15 Exhibit 3-K, # 16 Exhibit 3-L, # 17 Exhibit 4, # 18 Exhibit 5, # 19 Exhibit 6, # 20 Exhibit 7, # 21 Exhibit 8, # 22 Exhibit 9, # 23 Proposed Order) (Quinn, Elias) (Entered: 07/18/2011)
07/22/2011	118	MOTION for Leave to File Excess Pages by All Defendants. (Attachments: # 1 Exhibit Proposed Order) (Sibley - NOT SWORN, George) (Entered: 07/22/2011)
07/25/2011	119	REPLY to Response re 107 MOTION for Summary Judgment filed by DTE Energy, Detroit Edison Company. (Attachments: # 1 Index of Exhibits, # 2 Exhibit Exhibit 3: Letter from NRG to EPA (3/10/2005), # 3 Exhibit Exhibit 4: Letter from EPA to NRG (5/16/2005)) (Brownell, F.) (Entered: 07/25/2011)
07/25/2011	120	NOTICE of Change of Address/Contact Information by Mark B Bierbower on behalf of DTE Energy, Detroit Edison Company. (Bierbower, Mark) (Entered: 07/25/2011)
07/25/2011	121	NOTICE of Change of Address/Contact Information by Lucinda M. Langworthy on behalf of DTE Energy, Detroit Edison Company. (Langworthy, Lucinda) (Entered: 07/25/2011)
07/25/2011		Attorney James W Rubin is discontinued from receiving Notices of Electronic Filing. Reason: no longer with Hunton & Williams LLP. (Rubin, James) (Entered: 07/25/2011)
07/26/2011	122	NOTICE of Change of Address/Contact Information by Makram B Jaber on behalf of DTE Energy, Detroit Edison Company. (Jaber, Makram) (Entered: 07/26/2011)
07/26/2011	123	NOTICE of Change of Address/Contact Information by F. William Brownell on behalf of DTE Energy, Detroit Edison Company. (Brownell, F.) (Entered: 07/26/2011)
07/26/2011	124	ORDER granting 118 Motion for Leave to File Excess Pages. Signed by District Judge Bernard A. Friedman. (MWil) (Entered: 07/26/2011)
07/28/2011	125	RESPONSE to 116 MOTION To Establish Correct Legal Standard on the Issue of Routine Maintenance, Repair and Replacement (RMRR) MOTION To Establish Correct Legal Standard on the Issue of Routine Maintenance, Repair and Replacement (RMRR) MOTION To Establish Correct Legal Standard on the Issue of Routine Maintenance, Repair and Replacement (RMRR) MOTION To Establish Correct Legal Standard on the Issue of Routine Maintenance, Repair and Replacement (RMRR) filed by Natural Resources Defense Council, Sierra Club. (Attachments: # 1 Exhibit, # 2 Exhibit) (Bressett - NOT SWORN, Holly) (Entered: 07/28/2011)

07/28/2011)

- 08/01/2011 126 RESPONSE to 116 MOTION To Establish Correct Legal Standard on the Issue of Routine Maintenance, Repair and Replacement (RMRR) MOTION To Establish Correct Legal Standard on the Issue of Routine Maintenance, Repair and Replacement (RMRR) MOTION To Establish Correct Legal Standard on the Issue of Routine Maintenance, Repair and Replacement (RMRR) MOTION To Establish Correct Legal Standard on the Issue of Routine Maintenance, Repair and Replacement (RMRR) filed by United States. (Attachments: # 1 Index of Exhibits, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5) (Quinn, Elias) (Entered: 08/01/2011)
- 08/01/2011 127 RESPONSE to 117 MOTION for Partial Summary Judgment on the Legal Standards in this Case Defendants' Brief in Opposition to Plaintiff's Motion for Partial Summary Judgment filed by DTE Energy, Detroit Edison Company. (Attachments: # 1 Index of Exhibits Index of Exhibits, # 2 Exhibit Exhibit 1: Letter from Rosenberg to Dingell (6/19/1991), # 3 Exhibit Exhibit 2: U.S. Resp. & Objections to Detroit Edison's First Set of Req. for Admis. (excerpts), # 4 Exhibit Exhibit 3: Transcript of 30(b)(6) Deposition of Michael Sewell, U.S. v. Ky. Utilities (excerpts) (Brownell, F.) (Entered: 08/01/2011)
- 08/01/2011 128 MOTION for Leave to File Exhibit Under Seal by DTE Energy, Detroit Edison Company. (Brownell, F.) (Entered: 08/01/2011)
- 08/01/2011 129 SEALED EXHIBIT Exhibit 4 - Supplemental Expert Report of J. Golden (June 3, 2011) (excerpt) (Confidential) re 128 MOTION for Leave to File Exhibit Under Seal, 127 Response to Motion,, 117 MOTION for Partial Summary Judgment on the Legal Standards in this Case by DTE Energy, Detroit Edison Company. (Brownell, F.) (Entered: 08/01/2011)
- 08/04/2011 130 ORDER for Additional Briefing., (Brief due by 8/8/2011) Signed by District Judge Bernard A. Friedman. (MWil) (Entered: 08/04/2011)
- 08/05/2011 131 ORDER granting 128 Motion for Leave to File. Signed by District Judge Bernard A. Friedman. (MWil) (Entered: 08/05/2011)
- 08/05/2011 132 MOTION in Limine to Strike Defendants' Experts' Sur-Rebuttal Reports by United States. (Benson, Thomas) (Entered: 08/05/2011)
- 08/05/2011 133 ORDER REFERRING MOTION to Magistrate Judge R. Steven Whalen: 132 MOTION in Limine to Strike Defendants' Experts' Sur-Rebuttal Reports filed by United States. Signed by District Judge Bernard A. Friedman. (MWil) (Entered: 08/05/2011)
- 08/05/2011 134 MOTION in Limine to Exclude the Opinions of Edward Rothman by DTE Energy, Detroit Edison Company. (Attachments: # 1 Index of Exhibits Index of Exhibits, # 2 Exhibit Exhibit 4: Rothman Spreadsheet) (Johnson, Harry) (Entered: 08/05/2011)
- 08/05/2011 135 MOTION for Leave to File Exhibits Under Seal [Rothman] by DTE Energy, Detroit Edison Company. (Johnson, Harry) (Entered: 08/05/2011)
- 08/05/2011 136 SEALED EXHIBIT 1: Deposition Transcript of Edward Rothman (7/20/2011) re 135 MOTION for Leave to File Exhibits Under Seal [Rothman], 134 MOTION in Limine to Exclude the Opinions of Edward Rothman by DTE Energy, Detroit Edison Company. (Johnson, Harry) (Entered: 08/05/2011)
- 08/05/2011 137 SEALED EXHIBIT 2: Expert Report of Dr. Edward Rothman (4/22/2011) re 135 MOTION for Leave to File Exhibits Under Seal [Rothman], 134 MOTION in Limine to Exclude the Opinions of Edward Rothman by DTE Energy, Detroit Edison Company. (Johnson, Harry) (Entered: 08/05/2011)
- 08/05/2011 138 SEALED EXHIBIT 3: Expert Report of Philip Hayet (4/22/2011) re 135 MOTION for Leave to File Exhibits Under Seal [Rothman], 134 MOTION in Limine to Exclude the Opinions of Edward Rothman by DTE Energy, Detroit Edison Company. (Johnson, Harry) (Entered: 08/05/2011)
- 08/05/2011 139 SEALED EXHIBIT 5: Rebuttal & Supplemental Expert Report of Philip Hayet (7/5/2011 revised) re 135 MOTION for Leave to File Exhibits Under Seal [Rothman], 134 MOTION in Limine to Exclude the Opinions of Edward Rothman by DTE Energy, Detroit Edison Company. (Johnson, Harry) (Entered: 08/05/2011)
- 08/05/2011 140 SEALED EXHIBIT 6: Surrebuttal Expert Report of Mike King (8/1/2011) re 135 MOTION for Leave to File Exhibits Under Seal [Rothman], 134 MOTION in Limine to Exclude the Opinions of Edward Rothman by DTE Energy, Detroit Edison Company. (Johnson, Harry) (Entered: 08/05/2011)
- 08/05/2011 141 MOTION in Limine to Exclude the Opinions of Robert H. Koppe and Ranajit Sahu by DTE Energy, Detroit Edison Company. (Attachments: # 1 Index of Exhibits Index of Exhibits, # 2 Exhibit Exhibit 1: U.S. v. Ala. Power Co. (3/14/2011), # 3 Exhibit Exhibit 2: GADS Data Reporting Instructions, # 4 Exhibit Exhibit 4: U.S. v. Cinergy Trial Transcript Vol. 3 (5/13/2009), # 5 Exhibit Exhibit 5: U.S. v. Cinergy Trial Transcript Vol. 7 (5/13/2008), # 6 Exhibit Exhibit 6: U.S. v. Cinergy Order (12/29/2010), # 7 Exhibit Exhibit 7: U.S. v. Ala Power Co. Final Judgment Order (3/15/2011)) (Johnson, Harry) (Entered: 08/05/2011)
- 08/05/2011 142 MOTION for Leave to File Exhibits Under Seal [Koppe/Sahu] by DTE Energy, Detroit Edison Company. (Johnson, Harry) (Entered: 08/05/2011)

08/05/2011	143	SEALED EXHIBIT 3: Expert Report of Ranajit (Ron) Sahu (Apr. 22, 2011) re 141 MOTION in Limine to Exclude the Opinions of Robert H. Koppe and Ranajit Sahu, 142 MOTION for Leave to File Exhibits Under Seal [Koppe/Sahu] by DTE Energy, Detroit Edison Company. (Johnson, Harry) (Entered: 08/05/2011)
08/05/2011	144	SEALED EXHIBIT 8: Expert Report of Robert Koppe (Apr. 22, 2011) re 141 MOTION in Limine to Exclude the Opinions of Robert H. Koppe and Ranajit Sahu, 142 MOTION for Leave to File Exhibits Under Seal [Koppe/Sahu] by DTE Energy, Detroit Edison Company. (Johnson, Harry) (Entered: 08/05/2011)
08/05/2011	145	SEALED EXHIBIT 9: Supplemental Expert Report of Mike King (June 3, 2011) re 141 MOTION in Limine to Exclude the Opinions of Robert H. Koppe and Ranajit Sahu, 142 MOTION for Leave to File Exhibits Under Seal [Koppe/Sahu] by DTE Energy, Detroit Edison Company. (Johnson, Harry) (Entered: 08/05/2011)
08/05/2011	146	SEALED EXHIBIT 10: Deposition of Paul Fessler (June 8, 2011) re 141 MOTION in Limine to Exclude the Opinions of Robert H. Koppe and Ranajit Sahu, 142 MOTION for Leave to File Exhibits Under Seal [Koppe/Sahu] by DTE Energy, Detroit Edison Company. (Johnson, Harry) (Entered: 08/05/2011)
08/05/2011	147	SEALED EXHIBIT 11: Rebuttal and Supplemental Expert Report of Robert Koppe (July 6, 2011) re 141 MOTION in Limine to Exclude the Opinions of Robert H. Koppe and Ranajit Sahu, 142 MOTION for Leave to File Exhibits Under Seal [Koppe/Sahu] by DTE Energy, Detroit Edison Company. (Johnson, Harry) (Entered: 08/05/2011)
08/05/2011	148	MOTION in Limine to Exclude the Opinions of Philip Hayet by DTE Energy, Detroit Edison Company. (Attachments: # 1 Index of Exhibits) (Johnson, Harry) (Entered: 08/05/2011)
08/05/2011	149	MOTION for Leave to File Exhibits Under Seal [Hayet] by DTE Energy, Detroit Edison Company. (Johnson, Harry) (Entered: 08/05/2011)
08/05/2011	150	SEALED EXHIBIT 1: Expert Report of Philip Hayet (4/22/2011) re 148 MOTION in Limine to Exclude the Opinions of Philip Hayet, 149 MOTION for Leave to File Exhibits Under Seal [Hayet] by DTE Energy, Detroit Edison Company. (Johnson, Harry) (Entered: 08/05/2011)
08/05/2011	151	SEALED EXHIBIT 2: Rebuttal and Supplemental Expert Report of Philip Hayet (July 5, 2011 revised) re 148 MOTION in Limine to Exclude the Opinions of Philip Hayet, 149 MOTION for Leave to File Exhibits Under Seal [Hayet] by DTE Energy, Detroit Edison Company. (Johnson, Harry) (Entered: 08/05/2011)
08/05/2011	152	SEALED EXHIBIT 3: Deposition of Philip Hayet (7/15/2011) (excerpts) re 148 MOTION in Limine to Exclude the Opinions of Philip Hayet, 149 MOTION for Leave to File Exhibits Under Seal [Hayet] by DTE Energy, Detroit Edison Company. (Johnson, Harry) (Entered: 08/05/2011)
08/08/2011	153	RESPONSE to 130 Order, Set Deadlines/Hearings Joint Response to Order for Additional Briefing Entered August 4, 2011 by DTE Energy, Detroit Edison Company, Natural Resources Defense Council, Sierra Club, United States. (Johnson, Harry) (Entered: 08/08/2011)
08/10/2011	154	MOTION for Leave to File Certain Exhibits Under Seal, MOTION for Leave to File Excess Pages on Reply in Support of Plaintiff's Motion for Partial Summary Judgment on the Legal Standards at Issue in This Case by United States. (Quinn, Elias) (Entered: 08/10/2011)
08/10/2011	155	REPLY to Response re 117 MOTION for Partial Summary Judgment on the Legal Standards in this Case filed by United States. (Attachments: # 1 Index of Exhibits, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4) (Quinn, Elias) (Entered: 08/10/2011)
08/10/2011	156	SEALED EXHIBIT S 1, 5, and 6 re 155 Reply to Response to Motion by United States. (Attachments: # 1 Exhibit Sealed Exhibit 1 to ECF No. 155, # 2 Exhibit Sealed Exhibit 5 to ECF No. 155, # 3 Exhibit Sealed Exhibit 6 to ECF No. 155) (Quinn, Elias) (Entered: 08/10/2011)
08/10/2011	157	REPLY to Response re 116 MOTION To Establish Correct Legal Standard on the Issue of Routine Maintenance, Repair and Replacement (RMRR) MOTION To Establish Correct Legal Standard on the Issue of Routine Maintenance, Repair and Replacement (RMRR) MOTION To Establish Correct Legal Standard on the Issue of Routine Maintenance, Repair and Replacement (RMRR) MOTION To Establish Correct Legal Standard on the Issue of Routine Maintenance, Repair and Replacement (RMRR) filed by DTE Energy, Detroit Edison Company. (Attachments: # 1 Index of Exhibits Index of Exhibits, # 2 Exhibit Exhibit 1: Stipulation of Dismissal in U.S. v. Duke Energy (M.D.N.C.), # 3 Exhibit Exhibit 2: Complaint in U.S. v. Duke Energy (M.D.N.C.), # 4 Exhibit Exhibit 3: Slip Opinion in Sierra Club v. TVA (N.D. Ala.)) (Brownell, F.) (Entered: 08/10/2011)
08/10/2011	158	REPLY to Response re 116 MOTION To Establish Correct Legal Standard on the Issue of Routine Maintenance, Repair and Replacement (RMRR) MOTION To Establish Correct Legal Standard on the Issue of Routine Maintenance, Repair and Replacement (RMRR) MOTION To Establish Correct Legal Standard on the Issue of Routine Maintenance, Repair and Replacement (RMRR) MOTION To Establish Correct Legal Standard on the Issue of Routine Maintenance, Repair and Replacement (RMRR) Reply in Response to Intervenor-Plaintiffs' Opposition filed by DTE Energy, Detroit Edison Company. (Attachments: # 1 Exhibit Exhibit

1: BNA article (5/10/2004) (excerpt)) (Brownell, F.) (Entered: 08/10/2011)

08/18/2011 159 ORDER Staying Deadlines. Signed by District Judge Bernard A. Friedman. (MWil) (Entered: 08/18/2011)

08/23/2011 160 MEMORANDUM OPINION and ORDER granting 107 Defendants' MOTION for Summary Judgment Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 08/23/2011)

08/23/2011 161 JUDGMENT in favor of Defendants against Plaintiff Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 08/23/2011)

10/20/2011 162 NOTICE OF APPEAL by United States. Fee Status: No Fee Paid. (Benson, Thomas) (Entered: 10/20/2011)

10/21/2011 163 CERTIFICATE OF SERVICE re 162 Notice of Appeal. (DPer) (Entered: 10/21/2011)

03/28/2013 164 JUDGMENT from U.S. Court of Appeals - Sixth Circuit re 162 Notice of Appeal filed by United States - Disposition: The judgment of the district court is REVERSED, and the case is REMANDED for further proceedings consistent with the opinion of this court. [Appeal Case Number 11-2328] (KKra) (Entered: 04/08/2013)

05/20/2013 167 MANDATE from U.S. Court of Appeals - Sixth Circuit as to 162 Notice of Appeal filed by United States [Appeal Case Number 11-2328] (KKra) (Entered: 05/23/2013)

05/22/2013 165 MOTION for Leave to File Motion for Summary Judgment and for Scheduling Order by All Defendants. (Attachments: # 1 Index of Exhibits, # 2 Exhibit Ex. 1: U.S. v. DTE Energy Co. (6th Cir. Mar. 28, 2013), # 3 Exhibit Ex. 2: Transcript PI Hearing (E.D. Mich. Jan. 19, 2011) (excerpt)) (Brownell, F.) (Entered: 05/22/2013)

05/22/2013 166 MOTION for Summary Judgment Based on Compliance with Pre-Construction Projection Requirements by All Defendants. (Attachments: # 1 Index of Exhibits, # 2 Exhibit Ex. 1: EPA, Notice and Finding of Violation (June 4, 2010), # 3 Exhibit Ex. 2: Declaration of Skiles Boyd (Nov. 3, 2010), # 4 Exhibit Ex. 3: Notification Letter (Mar. 12, 2010), # 5 Exhibit Ex. 4: Supplemental Declaration of Skiles Boyd (May 20, 2013), # 6 Exhibit Ex. 5: Transcript of Usitalo 30(b)(6) Deposition (excerpt)) (Brownell, F.) (Entered: 05/22/2013)

05/24/2013 168 MOTION Requesting Status Conference by United States. (Attachments: # 1 Exhibit P.I. Hearing Transcript Excerpt) (Quinn, Elias) (Entered: 05/24/2013)

05/28/2013 169 NOTICE TO APPEAR : Status/Scheduling Conference set for 6/5/2013 01:00 PM before District Judge Bernard A. Friedman (CMul) (Entered: 05/28/2013)

06/03/2013 170 STIPULATION AND ORDER re 169 Notice to Appear (Status/ Scheduling Conference reset for Thursday, 6/20/2013 01:00 PM before District Judge Bernard A. Friedman) Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 06/03/2013)

06/12/2013 171 ATTORNEY APPEARANCE: Nicholas J. Schroeck appearing on behalf of Natural Resources Defense Council, Sierra Club (Schroeck, Nicholas) (Entered: 06/12/2013)

06/13/2013 172 DTE's Report in Advance of Status Conference REPORT by All Defendants (Attachments: # 1 Exhibit P.I. Hearing Transcript 1/19/2011 (excerpt)) (Brownell, F.) (Entered: 06/13/2013)

06/14/2013 173 NOTICE of Appearance by Shannon W. Fisk on behalf of Sierra Club. (Fisk, Shannon) (Entered: 06/14/2013)

06/20/2013 Minute Entry for proceedings held before District Judge Bernard A. Friedman: Motion Hearing held on 6/20/2013 re 165 MOTION for Leave to File Motion for Summary Judgment and for Scheduling Order filed by Detroit Edison Company, DTE Energy Disposition: Motion granted and briefing dates established.(Court Reporter Joan Morgan) (CMul) (Entered: 06/20/2013)

07/03/2013 174 ORDER granting 165 Motion for Leave to File. Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 07/03/2013)

07/03/2013 175 ORDER on briefing re 166 MOTION for Summary Judgment Based on Compliance with Pre-Construction Projection Requirements filed by Detroit Edison Company, DTE Energy. Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 07/03/2013)

07/03/2013 176 NOTICE TO APPEAR BY TELEPHONE: Status Conference set for 10/9/2013 02:00 PM before District Judge Bernard A. Friedman (CMul) (Entered: 07/03/2013)

08/01/2013 177 MOTION for Leave to File Opposition Brief and Supporting Documents Under Seal by United States. (Attachments: # 1 Proposed Order) (Quinn, Elias) (Entered: 08/01/2013)

08/02/2013 178 SEALED RESPONSE re 166 Motion for Summary Judgment,, regarding DTE's Preconstruction Compliance by United States. (Attachments: # 1 Index of Exhibits, # 2 Exhibit A - Project Authorization Documents, # 3 Exhibit B - Capital Plan Summary, # 4 Exhibit C - DTE RFA Responses, # 5 Exhibit D - Final ROR Inputs, # 6 Exhibit E - White Email, # 7 Exhibit F - Reliability Improvement Study, # 8 Exhibit G - Hayett Report, # 9 Exhibit H - Fessler Depo Excerpt) (Quinn, Elias) (Entered: 08/02/2013)

08/02/2013 179 RESPONSE to 166 MOTION for Summary Judgment Based on Compliance with Pre-Construction Projection Requirements - Opposition to Motion filed by Sierra Club. (Fisk, Shannon) (Entered: 08/02/2013)

08/06/2013 180 ORDER granting 177 Motion for Leave to File. Signed by District Judge Bernard A. Friedman.

(CMul) (Entered: 08/06/2013)

08/16/2013 181 NOTICE by United States re 178 Sealed Response to Motion,, of Redacted Filing (Attachments: # 1 U.S. Opposition Brief, # 2 Index of Exhibits, # 3 Exhibit A (redacted), # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit G (redacted), # 8 Exhibit H) (Quinn, Elias) (Entered: 08/16/2013)

08/19/2013 182 MOTION for Leave to File Excess Pages for Reply Brief in Support of Defendants' Motion for Summary Judgment by All Defendants. (Sibley - NOT SWORN, George) (Entered: 08/19/2013)

08/23/2013 183 REPLY to Response re 166 MOTION for Summary Judgment Based on Compliance with Pre-Construction Projection Requirements filed by DTE Energy, Detroit Edison Company. (Attachments: # 1 Exhibit Ex. 1 - Complaint in U.S. v. OGE, No. 13-690 (W.D. Okla.)) (Brownell, F.) (Entered: 08/23/2013)

09/03/2013 184 MOTION for Leave to File First Amended Complaint by United States. (Attachments: # 1 Index of Exhibits, # 2 Att. 1 (Proposed Amended Complaint), # 3 Att. 2 (Excerpts of Preliminary Injunction Transcript), # 4 Att. 3 (3.September 19, 2007 Letter, W. Rugenstein to W. Presson), # 5 Att. 4 (4.March 6, 2007 Letter, W. Rugenstein to L. Fiedler), # 6 Att. 5 (5.February 26, 2010 Letter, K. Guertin to T. Seidel)) (Benson, Thomas) (Entered: 09/03/2013)

09/06/2013 185 STIPULATION of Dismissal of Natural Resources Defense Council's Claims in Intervention Pursuant to FRCP 41(A)(1) by Natural Resources Defense Council, Sierra Club (Schroeck, Nicholas) (Entered: 09/06/2013)

09/06/2013 186 MOTION for Leave to File a First Amended Complaint by Sierra Club. (Attachments: # 1 Exhibit First Amended Complaint) (Fisk, Shannon) (Entered: 09/06/2013)

09/20/2013 187 RESPONSE to 184 MOTION for Leave to File First Amended Complaint filed by DTE Energy, Detroit Edison Company. (Attachments: # 1 Index of Exhibits Index of Exhibits, # 2 Exhibit Ex. 1: 2009 NOV, # 3 Exhibit Ex. 2: MDEQ PSD Workbook (Oct. 2003) (excerpt), # 4 Exhibit Ex. 3: Letter to EPA (June 23, 2010), # 5 Exhibit Ex. 4: Boyd Declaration (Nov. 3, 2010), # 6 Exhibit Ex. 5: DTE Presentation (July 23, 2007), # 7 Exhibit Ex. 6: DTE Presentation (Apr. 23, 2008), # 8 Exhibit Ex. 7: 2008 NSR Emissions Report for Trenton Channel (Feb. 21, 2009)) (Brownell, F.) (Entered: 09/20/2013)

09/20/2013 188 STIPULATION of Parties Extending the Dealines to File Reply Briefs in Support of Motions to Amend the Complaint by Sierra Club, United States (Furrie, Kristin) (Entered: 09/20/2013)

09/23/2013 189 RESPONSE to 186 MOTION for Leave to File a First Amended Complaint filed by DTE Energy, Detroit Edison Company. (Brownell, F.) (Entered: 09/23/2013)

10/01/2013 190 MOTION to Stay the Briefing Schedule and Reschedule the Status Conference due to a Lack in Appropriations by United States. (Furrie, Kristin) (Entered: 10/01/2013)

10/02/2013 TEXT-ONLY NOTICE: Hearing on October 9, 2013 is Cancelled (CMul) (Entered: 10/02/2013)

10/03/2013 191 ORDER granting 190 Motion to Stay. Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 10/03/2013)

10/18/2013 192 NOTICE by United States of Restored Appropriations and Stipulated Order Extending Deadlines for Reply Briefs (Quinn, Elias) (Entered: 10/18/2013)

10/21/2013 193 STIPULATION AND ORDER LIFTING STAY and establishing briefing deadlines Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 10/21/2013)

10/25/2013 194 REPLY to Response re 184 MOTION for Leave to File First Amended Complaint filed by United States. (Furrie, Kristin) (Entered: 10/25/2013)

10/25/2013 195 REPLY to Response re 186 MOTION for Leave to File a First Amended Complaint filed by Sierra Club. (Fisk, Shannon) (Entered: 10/25/2013)

03/03/2014 196 OPINION AND ORDER granting 166 Motion for Summary Judgment. Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 03/03/2014)

03/04/2014 197 Notice of E-mail Delivery Failure as to attorney Justin Savage. Bounced NEF for 196 Order on Motion for Summary Judgment. (SSch) (Entered: 03/04/2014)

03/11/2014 198 Ex Parte MOTION for Withdrawal of Attorney Justin Savage by United States. (Benson, Thomas) (Entered: 03/11/2014)

03/11/2014 199 ORDER granting 198 Motion to Withdraw as Attorney.. Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 03/11/2014)

04/02/2014 200 MOTION for Leave to File Any Rule 54(b) Motion by June 30, 2014 by United States. (Benson, Thomas) (Entered: 04/02/2014)

04/02/2014 201 MOTION Certification of Partial Final Judgment by Sierra Club. (Attachments: # 1 Index of Exhibits, # 2 Exhibit A, # 3 Exhibit B) (Fisk, Shannon) (Entered: 04/02/2014)

04/09/2014 202 ORDER granting 184 Motion for Leave to File; and granting 186 Motion for Leave to File Amended Complaints. Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 04/09/2014)

04/09/2014	203	AMENDED COMPLAINT filed by United States against DTE Energy, Detroit Edison Company. NO NEW PARTIES ADDED. (Benson, Thomas) (Entered: 04/09/2014)
04/11/2014	204	RESPONSE to 201 MOTION Certification of Partial Final Judgment , 200 MOTION for Leave to File Any Rule 54(b) Motion by June 30, 2014 filed by DTE Energy, Detroit Edison Company. (Brownell, F.) (Entered: 04/11/2014)
04/11/2014	205	MOTION for Reconsideration re 202 Order on Motion for Leave to File, Motion for Reconsideration or Clarification by DTE Energy, Detroit Edison Company. (Brownell, F.) (Entered: 04/11/2014)
04/16/2014	206	NOTICE of Appearance by Susan L. Williams on behalf of Sierra Club. (Williams, Susan) (Entered: 04/16/2014)
04/18/2014	207	(STRICKEN 4/23/2014) RESPONSE to 205 MOTION for Reconsideration re 202 Order on Motion for Leave to File, Motion for Reconsideration or Clarification filed by Sierra Club. (Fisk, Shannon) Modified on 4/23/2014 (CMul). (Entered: 04/18/2014)
04/23/2014	208	NOTICE TO APPEAR BY TELEPHONE: Tele/Status Conference set for 5/13/2014 01:00 PM before District Judge Bernard A. Friedman Plaintiff to initiate call/ or circulate call-in number. (CMul) (Entered: 04/23/2014)
04/23/2014	209	ORDER to Strike 207 Response to Motion filed by Sierra Club. Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 04/23/2014)
04/24/2014	210	MOTION for Leave to File Response to Defendants' Motion for Reconsideration or Clarification by Sierra Club. (Attachments: # 1 Exhibit A) (Fisk, Shannon) (Entered: 04/24/2014)
04/24/2014	211	MOTION for Extension of Time to File Answer re 203 Amended Complaint by DTE Energy, Detroit Edison Company. (Brownell, F.) (Entered: 04/24/2014)
04/30/2014	212	NOTICE of Appearance by Mary M. Whittle on behalf of Sierra Club. (Whittle, Mary) (Entered: 04/30/2014)
05/13/2014	213	ORDER granting 200 Motion for Leave to File; and stay ruling on 201 intervenor-plaintiffs motion for certification of partial final judgment. Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 05/13/2014)
05/13/2014		Minute Entry for proceedings held before District Judge Bernard A. Friedman: Telephonic Status Conference held on 5/13/2014 Disposition: Motion for leave to file response to reconsideration is granted. Motion for reconsideration is granted. Motion for extension of time to answer amended complaint is granted.(Court Reporter Joan Morgan) (CMul) (Entered: 05/14/2014)
05/22/2014	214	AMENDED COMPLAINT filed by Sierra Club against DTE Energy, Detroit Edison Company. NO NEW PARTIES ADDED. (Fisk, Shannon) (Entered: 05/22/2014)
05/27/2014	215	MOTION for Extension of Time to File Answer re 214 Amended Complaint by DTE Energy, Detroit Edison Company. (Brownell, F.) (Entered: 05/27/2014)
06/17/2014	216	ORDER granting 215 Motion for Extension of Time to Answer. Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 06/17/2014)
06/30/2014	217	ORDER granting in part 205 Motion for Reconsideration ; granting 210 Motion for Leave to File; and granting 211 Motion for Extension of Time to Answer All Defendants.. Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 06/30/2014)
06/30/2014	218	MOTION for Judgment Pursuant to Rule 54(b) by United States. (Benson, Thomas) (Entered: 06/30/2014)
06/30/2014	219	MOTION to Stay District Court Proceedings Pending Resolution of Appeals by DTE Energy, Detroit Edison Company. (Brownell, F.) (Entered: 06/30/2014)
08/05/2014	220	ORDER granting 201 Motion for partial summary judgment; granting 218 Motion for partial summary judgment; and granting 219 Motion to Stay pending appeals. Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 08/05/2014)
10/03/2014	221	NOTICE OF APPEAL by United States. Fee Status: No Fee Paid. (Benson, Thomas) (Entered: 10/03/2014)
10/03/2014	222	NOTICE OF APPEAL by Sierra Club re 196 Order on Motion for Summary Judgment, 220 Order on Motion - Free, Order on Motion for Judgment, Order on Motion to Stay. Receipt No: 0645-4843691 - Fee: \$ 505 - Fee Status: Fee Paid. (Fisk, Shannon) (Entered: 10/03/2014)
10/03/2014	223	Certificate of Service re 221 Notice of Appeal. (KKra) (Entered: 10/03/2014)
10/03/2014	224	Certificate of Service re 222 Notice of Appeal,. (KKra) (Entered: 10/03/2014)
10/15/2014		Court Reporter Acknowledgment of Transcript Order Form received on October 13, 2014. Transcript for court proceeding held on: June 20, 2013; May 13, 2014. Estimated transcript completion date: Sept. 22, 2014. Estimated number of pages: 50. Payment arrangements were made on October 13, 2014. (Morgan, J) (Entered: 10/15/2014)
10/21/2014	225	TRANSCRIPT of Telephonic Conference held on May 13, 2014. (Court Reporter/Transcriber:

Joan L. Morgan) (Number of Pages: 6) (Appeal Purposes) The parties have 21 days to file with the court and Court Reporter/Transcriber a Redaction Request of this transcript. If no request is filed, the transcript may be made remotely electronically available to the public without redaction after 90 days. Redaction Request due 11/12/2014. Redacted Transcript Deadline set for 11/21/2014. Release of Transcript Restriction set for 1/20/2015. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, the transcript is publicly available. (Morgan, J) (Entered: 10/21/2014)

10/21/2014 226 TRANSCRIPT of Telephonic Conference held on June 20, 2013. (Court Reporter/Transcriber: Joan L. Morgan) (Number of Pages: 20) (Appeal Purposes) The parties have 21 days to file with the court and Court Reporter/Transcriber a Redaction Request of this transcript. If no request is filed, the transcript may be made remotely electronically available to the public without redaction after 90 days. Redaction Request due 11/12/2014. Redacted Transcript Deadline set for 11/21/2014. Release of Transcript Restriction set for 1/20/2015. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, the transcript is publicly available. (Morgan, J) (Entered: 10/21/2014)

10/24/2014 Court Reporter Acknowledgment of Transcript Order Form received on October 22, 2014. Transcript for court proceeding held on: June 20, 2013, May 13, 2014. Estimated transcript completion date: on file. Estimated number of pages: 26. Payment arrangements were made on October 22, 2014. (Morgan, J) (Entered: 10/24/2014)

11/18/2014 227 Letter from Thomas A. Benson (CMul) (Entered: 11/18/2014)

01/10/2017 228 OPINION and JUDGMENT from U.S. Court of Appeals - Sixth Circuit re 222 Notice of Appeal, filed by Sierra Club, 221 Notice of Appeal filed by United States [Appeal Case Number 14-2274/14-2275] (Ahmed, N) Modified on 1/10/2017 (Ahmed, N). (Entered: 01/10/2017)

03/07/2017 229 ATTORNEY APPEARANCE: Andrea E. Hayden appearing on behalf of DTE Energy, Detroit Edison Company (Hayden, Andrea) (Entered: 03/07/2017)

05/16/2017 230 ORDER from U.S. Court of Appeals - Sixth Circuit re 222 Notice of Appeal, filed by Sierra Club, 221 Notice of Appeal filed by United States [Appeal Case Number 14-2274/14-2275] (Ahmed, N) (Entered: 05/16/2017)

08/02/2017 231 Ex Parte MOTION for Withdrawal of Attorney Mary M. Whittle by Sierra Club. (Fisk, Shannon) (Entered: 08/02/2017)

08/03/2017 232 (VACATED 8/4/17)ORDER granting 231 Motion to Withdraw as Attorney.. Signed by District Judge Bernard A. Friedman. (CMul) Modified on 8/4/2017 (CMul). (Entered: 08/03/2017)

08/04/2017 233 ORDER granting 231 Ex Parte MOTION for Withdrawal of Attorney Mary M. Whittle filed by Sierra Club. Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 08/04/2017)

08/04/2017 TEXT-ONLY ORDER vacating 232 Order on Motion to Withdraw as Attorney. (Wrong image attached). Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 08/04/2017)

08/07/2017 234 LETTER from the US Supreme Court that a petition for writ of certiorari was filed on 7/31/2017. [Supreme Court Case Number: 17-170] [Court of Appeals Case Number: 14-2274, 14-2275] (Ahmed, N) (Entered: 08/07/2017)

12/14/2017 235 LETTER from the US Supreme Court denying the petition for writ of certiorari [Supreme Court Case Number: 17-170] [Court of Appeals Case Number: 14-2274, 14-2275] (DWor) (Entered: 12/14/2017)

12/14/2017 236 MANDATE from U.S. Court of Appeals - Sixth Circuit as to 222 Notice of Appeal, filed by Sierra Club, 230 Appeal Order/Opinion/Judgment, 221 Notice of Appeal filed by United States [Appeal Case Number 14-2275/14-2274] (DWor) (Entered: 12/14/2017)

01/24/2018 237 NOTICE TO APPEAR: Status Conference set for 2/7/2018 01:00 PM before District Judge Bernard A. Friedman (JCur) (Entered: 01/24/2018)

02/01/2018 238 Joint MOTION to Stay Pending Settlement Negotiations by All Defendants. (Johnson, Harry) (Entered: 02/01/2018)

02/02/2018 239 ORDER granting 238 Joint Motion to Stay for 120 Days Pending Settlement Negotiations. Signed by District Judge Bernard A. Friedman. (JCur) (Entered: 02/02/2018)

02/02/2018 TEXT-ONLY NOTICE: Status Conference on 2/7/2018 is Cancelled 237 . (JCur) (Entered: 02/02/2018)

04/11/2018 240 NOTICE of Change of Address/Contact Information by F. William Brownell on behalf of DTE Energy, Detroit Edison Company. (Brownell, F.) (Entered: 04/11/2018)

06/11/2018 241 Joint MOTION Stay of Litigation by All Parties by United States. (Benson, Thomas) (Entered: 06/11/2018)

06/14/2018 242 ORDER granting 241 Joint Motion to Stay Case 180 days pending settlement negotiations. Signed by District Judge Bernard A. Friedman. (JCur) (Entered: 06/14/2018)

12/12/2018 243 Joint MOTION to Stay Litigation on Behalf of All Parties by United States. (Benson, Thomas) (Entered: 12/12/2018)

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EXHIBIT B

 		Search documents in this case: <input type="text"/> <input type="button" value="Search"/>
No. 17-170		
Title:	DTE Energy Company, et al., Petitioners v. United States, et al.	
Docketed:	August 2, 2017	
Lower Ct:	United States Court of Appeals for the Sixth Circuit	
Case Numbers:	(14-2274, 14-2275)	
Decision Date:	January 10, 2017	
Rehearing Denied:	May 1, 2017	

DATE	PROCEEDINGS AND ORDERS
Jul 31 2017	Petition for a writ of certiorari filed. (Response due September 1, 2017)
Aug 22 2017	Order extending time to file response to petition to and including October 2, 2017, for all respondents.
Aug 31 2017	Brief amici curiae of The Electric Reliability Corrdinating Council, et al. filed.
Sep 26 2017	Order further extending time to file response to petition to and including November 1, 2017, for all respondents.

Nov 01 2017	Brief of respondent United States in opposition filed.
Nov 01 2017	Brief of respondent Sierra Club in opposition filed.
Nov 15 2017	Reply of petitioners DTE Energy Company, et al. filed. Main Document Certificate of Word Count Proof of Service
Nov 20 2017	DISTRIBUTED for Conference of 12/8/2017.
Dec 08 2017	Letter received from counsel for petitioners December 8, 2017. (Distributed)
Dec 11 2017	Petition DENIED.

NAME	ADDRESS	PHONE
Attorneys for Petitioners		
F. William Brownell Counsel of Record	Hunton & Williams LLP 2200 Pennsylvania Avenue, NW Washington, DC 20037 bbrownell@hunton.com	(202) 955-1500
Party name: DTE Energy Company, et al.		
Attorneys for Respondents		

Noel Francisco Counsel of Record	Solicitor General United States Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530-0001 SupremeCtBriefs@USDOJ.gov	202-514-2217
Party name: United States		
Michael Soules Counsel of Record	Earthjustice 1625 Massachusetts Avenue NW Suite 702 Washington , DC 20036 msoules@earthjustice.org	2026674500
Party name: Sierra Club		
Other		
Scott Howard Segal Counsel of Record	Bracewell, LLP 2001 M Street, NW Suite 900 Washington, DC 20036 scott.segal@bracewell.com	(202)-828-5845
Party name: The Electric Reliability Corrdinating Council, et al.		

EXHIBIT C

Mr. Kevin S. Minoli
Designated Agency Ethics Official
U.S. EPA (2310A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Mr. Minoli:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Assistant Administrator for the Office of Air and Radiation of the United States Environmental Protection Agency.

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.

Upon confirmation, I will resign from my position with the law firm of with Hunton & Williams LLP. I currently have a capital account with the firm, and I will receive a refund of that account after my resignation. Until I have received this refund, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the ability or willingness of the firm to pay this refund, unless I first obtain a written waiver, pursuant to 18 U.S.C. 208(b)(1). I will continue to receive my monthly draw at the current rate until I resign from the law firm. I will not qualify for any additional partnership payments. If the law firm decides to pay me a discretionary partnership distribution for work I performed during the firm's fiscal year ending March 31, 2018, I will not accept that distribution and will forfeit it, unless I receive it before I assume the duties of the position of Assistant Administrator for the Office of Air and Radiation. If I receive the discretionary partnership distribution, I will not participate personally and substantially in any particular matter involving specific parties in which I know the law firm is a party or represents a party for a period of two years from the date on which I receive the distribution. If I do not receive the distribution, I will not participate personally and substantially in any particular matter involving specific parties in which I know the firm is a party or represents a party for a period of one year from the date of my resignation, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). In addition, I will not participate personally and substantially in any particular matter involving specific parties in which I know a former client of mine is a party or represents a party for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), obligations of the United States, or municipal bonds.

I will meet in person with you during the first week of my service in the position of Assistant Administrator in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely yours,

A handwritten signature in black ink, appearing to read "W L Wehrum", with a long horizontal flourish extending to the right.

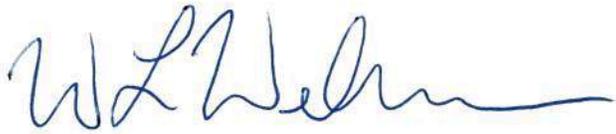
William L. Wehrum

8-28-17

EXHIBIT D

MEMORANDUM

SUBJECT: Recusal Statement
FROM: William L. Wehrum
Assistant Administrator
TO: Andrew R. Wheeler
Acting Administrator



9-17-18

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing 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.

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

OBLIGATIONS UNDER EXECUTIVE ORDER 13770

Pursuant to Section 1, Paragraph 6 of the Executive Order, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former employer, **Hunton & Williams LLP** (now Hunton Andrews Kurth 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.

RECUSAL LIST In effect until November 12, 2019	
FORMER EMPLOYER: Hunton & Williams LLP (now Hunton Andrews Kurth LLP)	
FORMER CLIENTS: ¹	
Agrium Inc.; Agrium U.S. Inc.; Nu-West Industries, Inc. American Forest & Paper Association American Fuel & Petrochemical Manufacturers American Petroleum Institute B10 Litigation Coalition Brick Industry Association CEMEX USA, Inc. Champion Power Equipment, Inc. Chemical Safety Advocacy Group (CSAG) Chevron Corporation Diageo Dominion Resources Services, Inc. Duke Energy Corporation Enbridge, Inc. Evonik Corporation ² ExxonMobil Corporation Flint Hills Resources, LP GPA Midstream Association (formally known as Gas Processors Association)	General Electric Company Georgia-Pacific LLC Kinder Morgan, Inc. Koch Companies Public Sector, LLC Koch Industries, Inc. Lehigh Hanson, Inc. Lowe’s Companies, Inc. National Stone, Sand and Gravel Association Pfizer Inc. Phillips 66 Company Portland Cement Association Prinoth Ltd. Salt River Project Spectra Energy Corp. Sunflower Electric Power Corporation, Inc. Tile Council of North America Utility Air Regulatory Group Utility Water Act Group Whitaker Greer Company

¹ Two confidential clients are not listed. Both clients have a written confidentiality agreement expressly prohibiting disclosure.

² Includes but not limited to an ongoing settlement negotiation.

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. Attached is a list of cases I am recused from given my participation at Hunton Andrews Kurth LLP.

SCREENING ARRANGEMENT

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

If Josh or Mandy determine that a particular matter will directly involve any of the entities or matters 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 OGC/Ethics for a determination. I will provide a copy of this memorandum to my principal subordinates with a copy to Justina Fugh, Senior Counsel for Ethics.

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 OGC/Ethics.

Attachment

cc: Matthew Z. Leopold, General Counsel
Ryan Jackson, Chief of Staff
Mandy Gunesakara, Deputy Assistant Administrator
Clint Woods, Deputy Assistant Administrator
Elizabeth Shaw, Deputy Assistant Administrator
David Harlow, Senior Counsel
Josh Lewis, Chief of Staff
Kevin Minoli, Designated Agency Ethics Official
Justina Fugh, Senior Counsel for Ethics

William L. Wehrum
 RECUSAL LIST – ATTORNEY BAR OBLIGATIONS

CASE NAME:	CITATION:
American Petroleum Institute v. EPA	No. 08-1277 (D.C. Cir.)
Environmental Integrity Project v. EPA	No. 08-1281 (D.C. Cir.) (consolidated with No. 08-1277)
Kinder Morgan CO2 Co., LP v. EPA	No. 09-1332 (D.C. Cir.)
Gas Processors Association v. EPA	No. 11-1023 (D.C. Cir.)
American Petroleum Institute, <i>et al.</i> v. EPA	No. 11-1309 (D.C. Cir.)
National Rural Electric Coop. v. EPA	No. 12-1208 (D.C. Cir.) (consolidated with No. 12-1163)
National Rural Electric Coop. v. EPA	No. 12-1352 (D.C. Cir.) (consolidated with No. 12-1346)
American Petroleum Institute v. EPA	No. 12-1405 (D.C. Cir.)
Gas Processors Association v. EPA	No. 12-1406 (D.C. Cir.) (consolidated with No. 12-1405)
American Petroleum Institute, <i>et al.</i> v. EPA	No. 12-1442 (D.C. Cir.)
American Petroleum Institute v. EPA	No. 13-1063 (D.C. Cir.) (consolidated with No. 11-1309)
American Petroleum Institute v. EPA	No. 13-1108 (D.C. Cir.)
Conservation Law Foundation, <i>et al.</i> v. EPA	No. 13-1233 (D.C. Cir.)
Sierra Club, <i>et al.</i> v. EPA	No. 13-1256 (D.C. Cir.) (consolidated with No. 16-1021)
American Petroleum Institute v. EPA	No. 13-1289 (D.C. Cir.) (consolidated with No. 13-1108)
PSEG Power LLC, <i>et al.</i> v. EPA	No. 14-1199 (D.C. Cir.) (consolidated with No. 13-1233)
Georgia-Pacific LLC v. EPA	No. 14-1267 (D.C. Cir.)
Gas Processors Association v. EPA	No. 15-1021 (D.C. Cir.) (consolidated with No. 15-1020)
American Petroleum Institute v. EPA	No. 15-1044 (D.C. Cir.) (consolidated with No. 13-1108)
American Petroleum Institute v. EPA	No. 15-1197 (D.C. Cir.)
Gas Processors Association v. EPA	No. 15-1473 (D.C. Cir.)
Sierra Club, <i>et al.</i> v. EPA, <i>et al.</i>	No. 15-1487 (D.C. Cir.)
Brick Industry Association v. EPA	No. 15-1492 (D.C. Cir.) (consolidated with No. 15-1487)
Sierra Club, <i>et al.</i> v. EPA, <i>et al.</i>	No. 16-1021 (D.C. Cir.)
American Fuel & Petrochemical, <i>et al.</i> v. EPA	No. 16-1033 (D.C. Cir.)
Air Alliance Houston, <i>et al.</i> v. EPA, <i>et al.</i>	No. 16-1035 (D.C. Cir.) (consolidated with No. 16-1033)
Brick Industry Association v. EPA	No. 16-1179 (D.C. Cir.) (consolidated with No. 15-1487)

American Petroleum Institute v. EPA	No. 16-1270 (D.C. Cir.) (consolidated with No. 13-1108)
American Petroleum Institute v. EPA	No. 16-1271 (D.C. Cir.)
American Petroleum Institute v. EPA	No. 16-1345 (D.C. Cir.) (consolidated with No. 16-1344)
Natural Resources Defense Council v. EPA	No. 16-1425 (D.C. Cir.)
Utility Air Regulatory Group v. EPA	No. 17-1088 (D.C. Cir.) (consolidated with No. 17-1085)

EXHIBIT E

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Wehrum, William L.
Sent: Fri 8/11/2017 2:28:01 PM
Subject: David Harlow

Ryan – Following up:

dharlow@hunton.com

cell: [REDACTED]

HUNTON & WILLIAMS **Bill Wehrum**

Partner

wwehrum@hunton.com

p 202.955.1637

[bio](#) | [vCard](#) | [blog](#) | [LinkedIn](#)

Hunton & Williams LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037

hunton.com

EXHIBIT F

Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e)

Filer's Information

Harlow, David

Senior Counsel to the Assistant Administrator for Air and Radiation, Environmental Protection Agency

Date of Appointment: 10/01/2017

Other Federal Government Positions Held During the Preceding 12 Months:

None

Electronic Signature - I certify that the statements I have made in this form are true, complete and correct to the best of my knowledge.

/s/ Harlow, David [electronically signed on 10/28/2017 by Harlow, David in Integrity.gov]

Agency Ethics Official's Opinion - On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments below).

/s/ Fugh, Justina, Certifying Official [electronically signed on 12/18/2017 by Fugh, Justina in Integrity.gov]

Other review conducted by

U.S. Office of Government Ethics Certification

Data Revised 12/07/2017

Data Revised 11/17/2017

Data Revised 11/13/2017

Data Revised 11/12/2017

1. Filer's Positions Held Outside United States Government

#	ORGANIZATION NAME	CITY, STATE	ORGANIZATION TYPE	POSITION HELD	FROM	TO
1	Hunton & Williams, LLP	Washington, District of Columbia	Law Firm	Counsel	8/1986	9/2017

2. Filer's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	Hunton & Williams, LLP (law firm)	N/A		Salary	\$421,189
2	Fidelity 401(k)				
2.1	Neuberger Berman Genesis Fund Class R6 (NRGSX)	Yes	\$100,001 - \$250,000		None (or less than \$201)
2.2	Dodge & Cox Stock Fund (DODGX)	Yes	\$100,001 - \$250,000		None (or less than \$201)
2.3	Fidelity Puritan Fund (FPURX)	Yes	\$100,001 - \$250,000		None (or less than \$201)
2.4	Fidelity Managed Income Portfolio Class 1	Yes	\$50,001 - \$100,000		None (or less than \$201)
2.5	Fidelity Diversified International Fund Class K (FDIKX)	Yes	\$15,001 - \$50,000		None (or less than \$201)
2.6	Wells Fargo Stable Value Fund Q	Yes	\$1,001 - \$15,000		None (or less than \$201)

3. Filer's Employment Agreements and Arrangements

#	EMPLOYER OR PARTY	CITY, STATE	STATUS AND TERMS	DATE
1	Hunton & Williams LLP	Richmond, Virginia	I will continue to participate in this defined contribution plan, but the plan sponsor no longer makes contributions.	8/1986

4. Filer's Sources of Compensation Exceeding \$5,000 in a Year

#	SOURCE NAME	CITY, STATE	BRIEF DESCRIPTION OF DUTIES
1	Hunton & Williams, LLP	Washington, District of Columbia	Provide legal advice and other services to clients.
2	Agrium Inc. & NU-West Industries, Inc.	Bellevue, Washington	Provide legal advice and services.
3	Chevron Corporation	San Ramon, California	Provide legal advice and services.
4	George R. Jarkesy, Jr.	Unknown	Provide legal advice and services.
5	LG&E and KU Energy, LLC	Louisville, Kentucky	Provide legal advice and services.
6	National Stone, Sand & Gravel Association	Alexandria, Virginia	Provide legal advice and services.
7	Sunflower Electric Power Corp.	Hays, Kansas	Provide legal services and services.
8	Utility Air Regulatory Group	Washington, District of Columbia	Provide legal advice and services.

5. Spouse's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	American Century Heritage TWHIX IRA	Yes	\$50,001 - \$100,000		None (or less than \$201)

6. Other Assets and Income

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	American Century Ultra Fund Investor Class (TWCUX)	Yes	\$15,001 - \$50,000		\$1,001 - \$2,500
2	Charles Schwab Brokerage Account	No	\$15,001 - \$50,000		None (or less than \$201)
2.1	Cash/Money Market Account	N/A	\$15,001 - \$50,000		None (or less than \$201)
3	Merrill Lynch AXA	No	\$500,001 - \$1,000,000		None (or less than \$201)
3.1	AXA Large Cap Growth Managed Vola	Yes	\$50,001 - \$100,000		None (or less than \$201)
3.2	AXA Large Cap Value Managed Vol	Yes	\$50,001 - \$100,000		None (or less than \$201)
3.3	EQ/Core Bond In	Yes	\$50,001 - \$100,000		None (or less than \$201)
3.4	AXA Large Cap Core Managed Vol	Yes	\$15,001 - \$50,000		None (or less than \$201)
3.5	Multimanager Technot	Yes	\$15,001 - \$50,000		None (or less than \$201)
3.6	EQ/International Equity Index	Yes	\$15,001 - \$50,000		None (or less than \$201)
3.7	EQ/Quality Bond PLUS	Yes	\$50,001 - \$100,000		None (or less than \$201)

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
3.8	AXA Moderate Allocation	Yes	\$15,001 - \$50,000		None (or less than \$201)
3.9	AXA International Core Managed Volatility	Yes	\$15,001 - \$50,000		None (or less than \$201)
3.10	AXA Mid Cap Value Managed Volatility	Yes	\$15,001 - \$50,000		None (or less than \$201)
3.11	EQ/Mid Cap Index	Yes	\$15,001 - \$50,000		None (or less than \$201)
3.12	AXA 2000 Managed Volati	Yes	\$15,001 - \$50,000		None (or less than \$201)
3.13	AXA/AB Short Duration Government Bond	Yes	\$15,001 - \$50,000		None (or less than \$201)
4	Invesco IRA	Yes	\$15,001 - \$50,000		None (or less than \$201)
4.1	Invesco American Franchise Fund - Class A	Yes	\$15,001 - \$50,000		None (or less than \$201)
4.2	Invesco Developing Markets Fund - Class A	Yes	\$15,001 - \$50,000		None (or less than \$201)
4.3	Invesco Mid Cap Growth Fund - Class A	Yes	\$1,001 - \$15,000		None (or less than \$201)

7. Transactions

(N/A) - Not required for this type of report

8. Liabilities

#	CREDITOR NAME		TYPE	AMOUNT	YEAR INCURRED	RATE	TERM
1	Bank of America		Exercised Line of Credit	\$50,001 - \$100,000	2015	5.285	240 months
2	USAA Savings Bank	See Endnote	Credit Card	\$15,001 - \$50,000	2017	7.9	N/A
3	USAA Savings Bank	See Endnote	Credit Card	\$15,001 - \$50,000	2016	7.9	N/A
4	Bank of America	See Endnote	Credit Card	\$10,001 - \$15,000	2017	11.24	N/A
5	Bank of America	See Endnote	Credit Card	\$10,001 - \$15,000	2016	11.24	N/A

9. Gifts and Travel Reimbursements

(N/A) - Not required for this type of report

Endnotes

PART	#	ENDNOTE
8.	2	The outstanding balance on this card occasionally exceeded the specified amount during the calendar year.
8.	3	The outstanding balance on this card occasionally exceeded the specified amount during the calendar year.
8.	4	The outstanding balance on this card occasionally exceeded the specified amount during the calendar year.
8.	5	The outstanding balance on this card occasionally exceeded the specified amount during the calendar year.

Summary of Contents

1. Filer's Positions Held Outside United States Government

Part 1 discloses positions that the filer held at any time during the reporting period (excluding positions with the United States Government). Positions are reportable even if the filer did not receive compensation.

This section does not include the following: (1) positions with religious, social, fraternal, or political organizations; (2) positions solely of an honorary nature; (3) positions held as part of the filer's official duties with the United States Government; (4) mere membership in an organization; and (5) passive investment interests as a limited partner or non-managing member of a limited liability company.

2. Filer's Employment Assets & Income and Retirement Accounts

Part 2 discloses the following:

- Sources of earned and other non-investment income of the filer totaling more than \$200 during the reporting period (e.g., salary, fees, partnership share, honoraria, scholarships, and prizes)
- Assets related to the filer's business, employment, or other income-generating activities that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in income during the reporting period (e.g., equity in business or partnership, stock options, retirement plans/accounts and their underlying holdings as appropriate, deferred compensation, and intellectual property, such as book deals and patents)

This section does not include assets or income from United States Government employment or assets that were acquired separately from the filer's business, employment, or other income-generating activities (e.g., assets purchased through a brokerage account). Note: The type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF).

3. Filer's Employment Agreements and Arrangements

Part 3 discloses agreements or arrangements that the filer had during the reporting period with an employer or former employer (except the United States Government), such as the following:

- Future employment
- Leave of absence
- Continuing payments from an employer, including severance and payments not yet received for previous work (excluding ordinary salary from a current employer)
- Continuing participation in an employee welfare, retirement, or other benefit plan, such as pensions or a deferred compensation plan
- Retention or disposition of employer-awarded equity, sharing in profits or carried interests (e.g., vested and unvested stock options, restricted stock, future share of a company's profits, etc.)

4. Filer's Sources of Compensation Exceeding \$5,000 in a Year

Part 4 discloses sources (except the United States Government) that paid more than \$5,000 in a calendar year for the filer's services during any year of the reporting period.

The filer discloses payments both from employers and from any clients to whom the filer personally provided services. The filer discloses a source even if the source made its payment to the filer's employer and not to the filer. The filer does not disclose a client's payment to the filer's employer if the filer did not provide the services for which the client is paying.

5. Spouse's Employment Assets & Income and Retirement Accounts

Part 5 discloses the following:

- Sources of earned income (excluding honoraria) for the filer's spouse totaling more than \$1,000 during the reporting period (e.g., salary, consulting fees, and partnership share)
- Sources of honoraria for the filer's spouse greater than \$200 during the reporting period
- Assets related to the filer's spouse's employment, business activities, other income-generating activities that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in income during the reporting period (e.g., equity in business or partnership, stock options, retirement plans/accounts and their underlying holdings as appropriate, deferred compensation, and intellectual property, such as book deals and patents)

This section does not include assets or income from United States Government employment or assets that were acquired separately from the filer's spouse's business, employment, or other income-generating activities (e.g., assets purchased through a brokerage account). Note: The type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF). Amounts of income are not required for a spouse's earned income (excluding honoraria).

6. Other Assets and Income

Part 6 discloses each asset, not already reported, that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in investment income during the reporting period. For purposes of the value and income thresholds, the filer aggregates the filer's interests with those of the filer's spouse and dependent children.

This section does not include the following types of assets: (1) a personal residence (unless it was rented out during the reporting period); (2) income or retirement benefits associated with United States Government employment (e.g., Thrift Savings Plan); and (3) cash accounts (e.g., checking, savings, money market accounts) at a single financial institution with a value of \$5,000 or less (unless more than \$200 of income was produced). Additional exceptions apply. Note: The type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF).

7. Transactions

Part 7 discloses purchases, sales, or exchanges of real property or securities in excess of \$1,000 made on behalf of the filer, the filer's spouse or dependent child during reporting period.

This section does not include transactions that concern the following: (1) a personal residence, unless rented out; (2) cash accounts (e.g., checking, savings, CDs, money market accounts) and money market mutual funds; (3) Treasury bills, bonds, and notes; and (4) holdings within a federal Thrift Savings Plan account. Additional exceptions apply.

8. Liabilities

Part 8 discloses liabilities over \$10,000 that the filer, the filer's spouse or dependent child owed at any time during the reporting period.

This section does not include the following types of liabilities: (1) mortgages on a personal residence, unless rented out (limitations apply for PAS filers); (2) loans secured by a personal motor vehicle, household furniture, or appliances, unless the loan exceeds the item's purchase price; and (3) revolving charge accounts, such as credit card balances, if the outstanding liability did not exceed \$10,000 at the end of the reporting period. Additional exceptions apply.

9. Gifts and Travel Reimbursements

This section discloses:

- Gifts totaling more than \$375 that the filer, the filer's spouse, and dependent children received from any one source during the reporting period.
- Travel reimbursements totaling more than \$375 that the filer, the filer's spouse, and dependent children received from any one source during the reporting period.

For purposes of this section, the filer need not aggregate any gift or travel reimbursement with a value of \$150 or less. Regardless of the value, this section does not include the following items: (1) anything received from relatives; (2) anything received from the United States Government or from the District of Columbia, state, or local governments; (3) bequests and other forms of inheritance; (4) gifts and travel reimbursements given to the filer's agency in connection with the filer's official travel; (5) gifts of hospitality (food, lodging, entertainment) at the donor's residence or personal premises; and (6) anything received by the filer's spouse or dependent children totally independent of their relationship to the filer. Additional exceptions apply.

Privacy Act Statement

Title I of the Ethics in Government Act of 1978, as amended (the Act), 5 U.S.C. app. § 101 et seq., as amended by the Stop Trading on Congressional Knowledge Act of 2012 (Pub. L. 112-105) (STOCK Act), and 5 C.F.R. Part 2634 of the U. S. Office of Government Ethics regulations require the reporting of this information. The primary use of the information on this report is for review by Government officials to determine compliance with applicable Federal laws and regulations. This report may also be disclosed upon request to any requesting person in accordance with sections 105 and 402(b)(1) of the Act or as otherwise authorized by law. You may inspect applications for public access of your own form upon request. Additional disclosures of the information on this report may be made: (1) to any requesting person, subject to the limitation contained in section 208(d)(1) of title 18, any determination granting an exemption pursuant to sections 208(b)(1) and 208(b)(3) of title 18; (2) to a Federal, State, or local law enforcement agency if the disclosing agency becomes aware of violations or potential violations of law or regulation; (3) to another Federal agency, court or party in a court or Federal administrative proceeding when the Government is a party or in order to comply with a judge-issued subpoena; (4) to a source when necessary to obtain information relevant to a conflict of interest investigation or determination; (5) to the National Archives and Records Administration or the General Services Administration in records management inspections; (6) to the Office of Management and Budget during legislative coordination on private relief legislation; (7) to the Department of Justice or in certain legal proceedings when the disclosing agency, an employee of the disclosing agency, or the United States is a party to litigation or has an interest in the litigation and the use of such records is deemed relevant and necessary to the litigation; (8) to reviewing officials in a new office, department or agency when an employee transfers or is detailed from one covered position to another; (9) to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record; (10) to contractors and other non-Government employees working on a contract, service or assignment for the Federal Government when necessary to accomplish a function related to an OGE Government-wide system of records; and (11) on the OGE Website and to any person, department or agency, any written ethics agreement filed with OGE by an individual nominated by the President to a position requiring Senate confirmation. See also the OGE/GOVT-1 executive branch-wide Privacy Act system of records.

Public Burden Information

This collection of information is estimated to take an average of three hours per response, including time for reviewing the instructions, gathering the data needed, and completing the form. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Program Counsel, U.S. Office of Government Ethics (OGE), Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917.

Pursuant to the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number (that number, 3209-0001, is displayed here and at the top of the first page of this OGE Form 278e).

EXHIBIT G



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

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Recusal Statement

FROM: David S. Harlow
Senior Counsel

TO: William L. Wehrum
Assistant Administrator

DATE: December 28, 2017

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing 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.

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

OBLIGATIONS UNDER EXECUTIVE ORDER 13770

Pursuant to Section 1, Paragraph 6 of the Executive Order, I understand that I am

prohibited from participating in any particular matter involving specific parties in which my former employer, **Hunton & Williams 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 October 1, 2019	
FORMER EMPLOYER: Hunton & Williams LLP	
FORMER CLIENTS: ² Agrium Inc.; Nu-West Industries, Inc. Chevron Corporation DTE Energy Company LG&E and KU Energy, LLC	National Stone, Sand and Gravel Association Sunflower Electric Power Corporation, Inc. Utility Air Regulatory Group

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. Attached is a list of cases I am recused from given my participation at Hunton & Williams LLP.

SCREENING ARRANGEMENT

In order to ensure that I do not participate in matters relating to any of the entities listed above, I will instruct Josh Lewis, Chief of Staff, and Mandy Gunasekara, Principal Deputy

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

² One confidential client is not listed. This client has a written confidentiality agreement expressly prohibiting disclosure.

Assistant Administrator, to assist in screening EPA matters directed to my attention that involve these entities. All inquiries and comments involving the entities on my recusal list should be directed to Josh and Mandy without my knowledge or involvement until after my recusal period ends.

If Josh or Mandy determine that a particular matter will directly involve any of the entities listed on my "specific party" recusal list, then he/she will refer it for action or assignment to another, without my knowledge or involvement. In the event that he/she is unsure whether an issue is a particular matter from which I am recused, then he/she will consult with OGC/Ethics for a determination. I will provide a copy of this memorandum to my principal subordinates with a copy to Justina Fugh, Senior Counsel for Ethics.

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/Ethics.



David S. Harlow
Senior Counsel

cc: Elizabeth Shaw, Deputy Assistant Administrator
Justina Fugh, Senior Counsel for Ethics

David S. Harlow
RECUSAL LIST – ATTORNEY BAR OBLIGATIONS

CASE NAME:	CITATION:
Utility Air Regulatory Group v. EPA	No. 12-1166 (D.C. Cir.) (consolidated with No. 12-1100)
American Petroleum Institute v. EPA	No. 13-1063 (D.C. Cir.) (consolidated with No. 11-1309)
Utility Air Regulatory Group v. EPA	No. 15-1370 (D.C. Cir.) (consolidated with No. 15-1363)
LG&E and KU Energy v. EPA	No. 15-1418 (D.C. Cir.)
Utility Air Regulatory Group v. EPA	No. 17-1018 (D.C. Cir.) (consolidated with No. 17-1015)

EXHIBIT H



E. SCOTT PRUITT
ADMINISTRATOR

December 7, 2017

MEMORANDUM

SUBJECT: New Source Review Preconstruction Permitting Requirements: Enforceability and Use of the Actual-to-Projected-Actual Applicability Test in Determining Major Modification Applicability

FROM: E. Scott Pruitt

A handwritten signature in black ink, appearing to read "Scott Pruitt", written over the printed name.

TO: Regional Administrators

I. Introduction and Purpose of Memorandum

In accordance with presidential priorities for streamlining regulatory permitting requirements for manufacturing and other types of facilities, the U.S. Environmental Protection Agency is conducting a review of the agency's implementation of the preconstruction permitting requirements under the Clean Air Act, which are generally known as the New Source Review program. This review will involve an assessment of opportunities for the EPA to make improvements by clarifying or revising the EPA regulations implementing the NSR program, providing technical support and oversight to the states that administer the program and evaluating the agency's enforcement of the NSR requirements. With respect to the latter, there continue to be disputes pending in the United States courts in NSR enforcement cases that began before the EPA initiated the current review of the NSR program. The United States is represented in those matters by the Department of Justice and the Office of Solicitor General. As those cases proceed toward resolution, the EPA continues to have implementation and oversight responsibilities for the NSR program.

Based on an initial assessment, I understand that two recent appellate court decisions¹ in the pending enforcement proceeding against DTE Energy have created uncertainty regarding the applicability of NSR permitting requirements in circumstances where the owner or operator of an existing major stationary source projects that proposed construction will not cause an increase in actual emissions that triggers NSR requirements. As we begin the EPA's current review of the

¹ These appellate decisions are *U.S. v. DTE Energy Co.*, 711 F.3d 643 (6th Cir. 2013) and *U.S. v. DTE Energy Co.*, 845 F.3d 735 (6th Cir. 2017).

NSR program, this memorandum communicates how the EPA intends to apply and enforce certain aspects of the applicability provisions of the NSR regulations that have been addressed in these appellate decisions.

In particular, this memorandum addresses the EPA's intended approach concerning the procedures contained in the NSR Reform Rules² (and approved state regulations that reflect the content of those rules) for sources that have used or intend to use "projected actual emissions" in determining NSR applicability and the associated pre- and post-project source obligations. While this memorandum describes our current intended approach for future matters, decisions about how to proceed in ongoing enforcement matters will be made on a case-by-case basis. We believe this memorandum is necessary to provide greater clarity for sources and states implementing the NSR regulations. The guidance is also generally consistent with the NSR Reform Rules and with EPA objectives and ongoing efforts to clarify and streamline the NSR program requirements and reduce burden on regulated sources in accordance with recent Presidential actions.³

The remainder of this memorandum is organized into two sections. Section II contains relevant CAA, regulatory and litigation background. Section III contains a discussion of the issues raised by the DTE litigation and addresses the EPA's current intended approach concerning the following specific topics: 1) consideration of post-project emissions management in determining NSR applicability; 2) the role of post-project actual emissions in major modification applicability; 3) the EPA oversight and enforcement of pre-project NSR applicability analyses involving the actual-to-projected-actual applicability test; and 4) the role of EPA-approved state and local NSR programs in implementing NSR requirements.

This memorandum explains how the EPA intends to apply and enforce certain requirements of the NSR regulations as we begin review of that program. This document is not a rule or regulation, and the guidance it contains may not apply to a particular situation based upon the individual facts and circumstances. This memorandum does not change or substitute for any law, regulation or other legally binding requirement and is not legally enforceable. This memorandum is not final agency action, but merely clarifies the EPA's current understanding regarding certain elements of the NSR regulations.

II. Background on CAA and Regulatory Provisions and DTE Litigation

A. Relevant CAA and EPA Regulatory Provisions

The NSR provisions of the CAA and of the EPA's implementing regulations require new major stationary sources and major modifications at existing major stationary sources to, among other things, obtain an air quality permit before beginning construction. This permitting process for major stationary sources is required whether the major source or major modification is planned for an area where the national ambient air quality standards (NAAQS) are exceeded

² In 2002, the EPA issued a final rule that revised the regulations governing the major NSR program. 67 FR 80186. We refer generally to these rule provisions as "NSR Reform."

³ See e.g., Presidential Memorandum: Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing (January 24, 2017); Executive Order 13777: Enforcing the Regulatory Reform Agenda (February 24, 2017).

(nonattainment areas) or an area where the NAAQS have not been exceeded (attainment and unclassifiable areas). In general, permits for sources in attainment areas and for other pollutants regulated under the major source program are referred to as prevention of significant deterioration (PSD) permits, while permits for major sources emitting nonattainment pollutants and located in nonattainment areas are referred to as nonattainment NSR (NNSR) permits. The entire preconstruction permitting program, which includes the PSD and the NNSR permitting programs, is referred to as the NSR program.⁴

The CAA defines a “modification” as “any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.” 42 U.S.C. § 7411(a)(4). A “major modification” is defined in the regulations as “any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in paragraph (b)(40) of this section) of a regulated NSR pollutant (as defined in paragraph (b)(50) of this section); and a significant net emissions increase of that pollutant from the major stationary source.” 40 C.F.R. § 52.21(b)(2)(i).

The NSR applicability procedures in the regulations reaffirm the role of the “project” emissions increase⁵ and “net emissions increase”⁶ in determining major modification applicability: “...a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases – a significant emissions increase (as defined in paragraph (b)(40) of this section), and a significant net emissions increase (as defined in paragraphs (b)(3) and (b)(23) of this section). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.” 40 C.F.R. § 52.21(a)(2)(iv)(a).

Prior to beginning construction of a project the owner or operator of the major stationary source must calculate the emissions increases that it projects will be caused by the project and potentially the net emissions increase to determine if NSR permitting is required. The procedure for calculating whether a significant emissions increase will occur as a result of a modification is emission unit specific and depends upon whether the emissions unit is new or existing. For new emissions units, increases are calculated using the “actual-to-potential” test, and for existing emissions units, increases are calculated using the “actual-to-projected-actual” applicability test.

⁴ The CAA requirements for PSD programs set forth under at 42 U.S.C. §§ 7470-7479 are implemented by the EPA’s PSD regulations found at 40 C.F.R. § 51.166 (minimum requirements for an approvable PSD State Implementation Plan) and 40 C.F.R. § 52.21 (PSD permitting program for permits issued under the EPA’s federal permitting authority). The CAA sets forth requirements for state implementation plans for nonattainment areas at 42 U.S.C. §§ 7501-7515, and the general provisions include NNSR permitting requirements at 42 U.S.C. §§ 7502(c)(5) and 7503. The CAA’s NNSR permitting requirements are implemented by the EPA’s NNSR regulations found at 40 C.F.R. § 51.165, § 52.24 and part 51 of Appendix S. This memorandum cites certain definitions and requirements in the federal PSD regulations at 40 C.F.R. § 52.21. However, the other NSR regulations identified contain analogous definitions and requirements, and the statements in this memorandum also apply to those analogous provisions.

⁵ A “project” is defined as “a physical change in, or change in the method of operation of, an existing major stationary source.” 40 C.F.R. § 52.21(b)(52).

⁶ The net emissions increase is calculated as the sum of the project emissions increase, calculated pursuant to 40 C.F.R. § 52.21(a)(2)(iv), and any other increases and decreases in actual emissions at the major stationary source that are contemporaneous and otherwise creditable. *See* 40 C.F.R. § 52.21(b)(3).

See 40 C.F.R § 52.21(a)(2)(iv). Under both applicability tests, pre-project actual emissions are established using “baseline actual emissions,” which are defined specifically for existing electric utility steam generating units and separately for all other existing emissions units. See 40 C.F.R § 52.21(b)(48). Under the actual-to-potential test, an emissions increase is calculated as the difference between the potential to emit (as defined at 40 C.F.R § 52.21(b)(4)) following completion of the project and the baseline actual emissions. Under the actual-to-projected-actual applicability test, an emissions increase is calculated as the difference between the projected actual emissions (as defined at 40 C.F.R § 52.21(b)(41)) and the baseline actual emissions.⁷

The focus of this memorandum is on the actual-to-projected-actual applicability test and associated requirements in the NSR regulations. “Projected actual emissions” is defined as “the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit’s design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.” 40 C.F.R § 52.21(b)(41)(i). In making a projection, the owner or operator “[s]hall consider all relevant information, including but not limited to, historical operational data, the company’s own representations, the company’s expected business activity and the company’s highest projections of business activity, the company’s filings with the State or Federal regulatory authorities, and compliance plans under the approved State Implementation Plan.” 40 C.F.R § 52.21(b)(41)(ii)(a). In order to determine the projected increase that results from the particular change consistent with the definition of “major modification,” the owner or operator “[s]hall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit’s emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under paragraph (b)(48) of this section and that are also unrelated to the particular project, including any increased utilization due to product demand growth.”⁸ 40 C.F.R § 52.21(b)(41)(ii)(c). Finally, the rules contain objective calculation requirements (e.g. for electric utility steam generating units, baseline actual emissions must be based on a consecutive 24-month period in the 5-year period immediately preceding the project, and in order not to trigger NSR permitting requirements, the calculated emissions increase may not equal or exceed numerical “significance” thresholds). See 40 C.F.R. §52.21(b)(23), (48).

With respect to the role of post-project actual emissions in the major modification applicability provisions, the regulations state the following: “Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.” 40 C.F.R. § 52.21(a)(2)(iv)(b). In addition, the regulations contain specific recordkeeping, monitoring and reporting provisions set forth at 40 C.F.R. § 52.21(r)(6) that apply in circumstances where there is a “reasonable

⁷ In lieu of using projected actual emissions, owners or operators may use potential to emit. See 40 C.F.R § 52.21(b)(41)(ii)(d).

⁸ This provision is sometimes referred to as the “demand growth exclusion,” when used in the context of utilities or the “independent factors exclusion,” when used in the context of other manufacturing operations, and qualifying emissions are sometimes referred to as “excludable emissions.” There is no presumption that an emissions increase following that change was caused by the change, but rather, this is the analysis required under §52.21(b)(41)(ii)(c).

possibility,” as that term is defined at 40 C.F.R. § 52.21(r)(6)(vi), that a project that is not projected to cause a significant emissions increase may nevertheless result in an actual significant emissions increase of a regulated NSR pollutant.⁹ Depending on the reasonable possibility criteria applicable to a project and the type of emissions unit(s) involved, owners or operators must comply with one or more of the following requirements: 1) document and maintain a pre-project record of the NSR applicability information identified at 40 C.F.R. §52.21(r)(6)(i); 2) for electric utility steam generating units only, submit the information set out in paragraph (r)(6)(i); 3) monitor and record emissions, on a calendar-year basis, for a period of five or 10 years after the unit resumes regular operations after the change (depending on whether there is an increase in the design capacity or potential to emit); 4) for electric utility steam generating units only, submit a report of annual emissions for each year that monitoring is required; and 5) for all other units, submit a report if annual emissions exceed the baseline actual emissions by a significant amount and if such emissions differ from the pre-construction projection. *See* 40 C.F.R. § 52.21(r)(6)(i) - (v). For projects subject to 5-year post-change emissions tracking, the EPA indicated in the NSR Reform rule preamble that it would “presume that any increases that occur after 5 years are not associated with the physical or operational changes.”¹⁰

B. DTE Litigation

Since 2010, the EPA has been involved in an enforcement action and litigation concerning a construction project at the DTE Monroe, Michigan power plant. At issue in that litigation has been a dispute between the EPA and DTE on the relationship between the requirements in the regulations that govern pre-project NSR emission projections and the role of post-project emissions monitoring.

The DTE litigation has resulted in two separate decisions by the same panel of three judges on the U.S. Court of Appeals for the Sixth Circuit. Neither of these decisions were unanimous, and in the second decision, each judge wrote a separate opinion. In the first decision, two of the three judges agreed that the EPA could pursue enforcement based solely on a claim that the source had failed to properly project, in accordance with the regulations, future emissions, even though actual emissions from the source had not increased after the construction was completed and the source resumed operation. *See U.S. v. DTE Energy Co.*, 711 F.3d 643, 649-650, 652 (6th Cir. 2013). In allowing enforcement based solely on violations of EPA regulations governing future emission projections, the majority opinion cautioned against EPA “second guessing” a projection. The third judge dissented based on her view that there was no enforceable violation of the EPA’s projection regulations when there was no post-construction emissions increase. *See id.* at 652-53. After the case reached the Sixth Circuit for the second time, the two judges who had agreed in the first case (that the EPA could pursue enforcement based solely on an allegedly improper projection) were unable to agree on the extent to which the EPA could “second guess” such a projection. *United States v. DTE Energy Co.*, 845 F.3d 735 (6th Cir. 2017). One of these two judges concluded that DTE had satisfied the basic requirements for making projections and the other concluded DTE had not. *Compare id.* at 738-740 *with id.* at 751-55. The third judge (the same one who dissented in the first case) concluded that she was required to follow the majority holding in the first case that the EPA could pursue enforcement based solely on an improper projection and then sided with the

⁹ These provisions are sometimes referred to as the “reasonable possibility” rule provisions.

¹⁰ 67 FR 80197 (December 31, 2002).

judge who found DTE had not adequately justified its projection (while declining to support the parts of her colleague's opinion that could be read to expand the majority opinion in the first case). *See id.* at 742.

The matters at issue in the DTE litigation are complex, and the appellate court decisions have left ambiguity regarding the scope of the applicable regulations and what sources must do to comply. Further, the Supreme Court has been asked to review the second appellate court opinion. Considering this uncertainty, the EPA believes it would be helpful to explain to stakeholders how the EPA plans to proceed in implementing and exercising its authority under those regulations pending further review of these issues by the EPA.

III. Discussion

As described previously, the NSR regulations require owners or operators to perform a pre-construction applicability analysis to determine whether a proposed project would result in a significant emissions increase and a significant net emissions increase, thus triggering the requirement to obtain an NSR permit. The regulations also specify the information used in that analysis that, when certain criteria in the "reasonable possibility" rule provisions are met, shall be documented, maintained and in certain cases submitted to the reviewing authority prior to beginning construction. *See* 40 C.F.R. §§ 52.21(a)(2), 52.21(r)(6)(i), (ii). If required, the pre-project record must contain: 1) a description of the project; 2) identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and 3) a description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (b)(41)(ii)(c) and an explanation for why such amount was excluded and any netting calculations,¹¹ if applicable. *See* 40 C.F.R. § 52.21(r)(6)(i).

One issue that has arisen with respect to determining projected actual emissions resulting from a proposed project is whether it is permissible under the regulations for an owner or operator to factor into the projection an intent to actively manage future emissions from the project on an ongoing basis to prevent a significant emissions increase or a significant net emissions increase from occurring. The EPA notes that the rule language specifically provides that "all relevant information" shall be considered in making a projection. *See* 40 C.F.R. § 52.21(b)(41)(ii)(a). Pending further review of the issues described above by the EPA, the EPA intends to apply the NSR regulations in accordance with this language such that the intent of an owner or operator to manage emissions from a unit in that manner after a project is completed represents relevant information in the context of projecting future actual emissions from that unit that could be considered along with other relevant information in making an emissions projection, as provided in the NSR regulations.

In finalizing the 2002 NSR rule revisions, the EPA explained that owners or operators "will not be required to make the projected actual emissions projection through a permitting action" and

¹¹ The term "netting" refers to determining the net emissions increase. The net emissions increase is calculated as the sum of the projected emissions increase, calculated pursuant to 40 C.F.R. § 52.21(a)(2)(iv), and any other increases and decreases in actual emissions at the major stationary source that are contemporaneous and otherwise creditable. *See* 40 C.F.R. § 52.21(b)(3).

that it “also believe[d] that it is not necessary to make ... future projections enforceable in order to adequately enforce the major NSR requirements. The Act provides ample authority to enforce the major NSR requirements if ... physical or operational change results in a significant net emissions increase at [a] major stationary source.” 68 FR 80204 (December 31, 2002). Moreover, the regulations are clear that owners or operators need not obtain approval of their pre-project NSR applicability analyses from the reviewing authority before construction.¹²

As the EPA explained in 2002, a key objective of the projected actual emissions provisions was to avoid the need for permitting authority review of NSR applicability determinations prior to implementation of a project. The rules instruct the affected source to consider “all relevant information,” (as defined in 40 C.F.R. §52.21(b)(41)(ii)) in making an applicability determination. They also include specific instructions as to when and how actual emissions projections must be documented and when post-project emissions monitoring and reporting is required. If an affected source complies with those requirements, it has satisfied the source obligations that are required under our NSR rules.

The NSR rules instruct the source to exclude from a projection those emissions that both could have been accommodated during the baseline period and that are unrelated to the project. Because increased emissions may be caused by multiple factors, the EPA has recognized that the source must exercise judgement to exclude increases for which the project is not the “predominant cause.” 45 Fed. Reg. 32,327 (1992). The NSR rules provide no mechanism for agency review of procedurally compliant emission projections. To infer the existence of such a mechanism would be tantamount to inferring agency authority to require pre-approval of emissions projections. Such an outcome is inconsistent with the text of the EPA rules and with the agency’s clearly stated intent in adopting those rules.

Consistent with these regulations, the EPA intends to focus on the fact that it is the obligation of source owners or operators to perform pre-project NSR applicability analyses and document and maintain records of such analyses as required by the regulations. It also intends to focus on the fact that the post-project monitoring, recordkeeping and reporting requirements provide a means to evaluate a source’s pre-project conclusion that NSR does not apply and that the NSR applicability procedures make clear that post-project actual emissions can ultimately be used to determine major modification applicability. This is reflected in the following sentence: “Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.” 40 C.F.R. § 52.21(a)(2)(iv)(b). In addition, the post-project monitoring and recordkeeping requirements under the “reasonable possibility” rule provisions described previously further confirm the important role that actual post-project emissions data play in determining NSR applicability.

Based on the foregoing, and while further review of these issues by the EPA is pending, the EPA intends to implement and exercise its authority under the NSR provisions to clarify that

¹² With respect to existing electric utility steam generating unit(s), for which submittal of the pre-project record is required before beginning actual construction, the regulations explicitly state: “Nothing in this paragraph ... shall be construed to require the owner or operator or such a unit to obtain any determination from the Administrator before beginning actual construction.” 40 C.F.R. § 52.21(r)(6)(ii). For all other emissions unit categories, there is no requirement to submit the pre-project applicability record before construction.

when a source owner or operator performs a pre-project NSR applicability analysis in accordance with the calculation procedures in the regulations, and follows the applicable recordkeeping and notification requirements in the regulations, that owner or operator has met the pre-project source obligations of the regulations, unless there is clear error (e.g. the source applies the wrong significance threshold). The EPA does not intend to substitute its judgement for that of the owner or operator by “second guessing” the owner or operator’s emissions projections.

Furthermore, when an owner or operator projects that a project will result in an emission increase or a net emissions increase less than the significant emissions rate in accordance with the NSR regulations, the EPA intends to focus on the level of actual emissions during the 5- or 10-year recordkeeping or reporting period after the project for purposes of determining whether to exercise its enforcement discretion and pursue an enforcement action. That is, the EPA does not presently intend to initiate enforcement in such future situations unless post-project actual emissions data indicate that a significant emissions increase or a significant net emissions increase did in fact occur. Although the majority in the first DTE opinion held that the EPA may pursue enforcement of its projection regulation where a source owner or operator has failed to perform a required pre-project applicability analysis or has failed to follow the objective calculation requirements of the regulations regardless of the level of post-project emissions, the court decision does not compel the EPA to pursue enforcement in such situations. The EPA has substantial discretion regarding prosecution of violations of the CAA and the first DTE opinion does not limit the EPA’s discretion to consider whether prosecution of other sources is warranted in similar circumstances. Thus, pending further review of these issues by the courts and the EPA, the agency does not intend to pursue new enforcement cases in circumstances such as those presented in the DTE matter.

Finally, the EPA notes that while this memorandum refers to federal NSR regulations at 40 C.F.R. § 52.21, in states with EPA-approved NSR programs, the state and local regulations that the EPA has approved into the SIP are the governing federal law. To be approvable, the NSR requirements in a state plan must be at least as stringent as the federal rule requirements in 40 C.F.R. §§ 51.165 and 51.166 for NNSR and PSD programs, respectively, but may be more stringent at the state’s discretion. The implementation of the NSR program is one example of cooperative federalism under the CAA under which the state regulations have primacy once they are approved by the EPA. However, if it is later determined that the NSR program approved into the SIP is deficient, the EPA has the authority under 42 U.S.C. § 7410(k)(5) to call for a state to revise its regulations. In the absence of such a SIP call, it is the EPA-approved state regulations that govern NSR applicability.

cc: Ryan Jackson
Mandy Gunasekara

EXHIBIT I

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF
AMERICA,
Plaintiff-Appellant,

No. 11-2328

v.

>

DTE ENERGY COMPANY;
DETROIT EDISON
COMPANY,
Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.
No. 2:10-cv-13101—Bernard A. Friedman,
District Judge.

Argued: November 27, 2012

Decided and Filed: March 28, 2013

Before: BATCHELDER, Chief Judge;
DAUGHTREY and ROGERS, Circuit Judges.

COUNSEL

ARGUED: Thomas A. Benson, UNITED STATES
DEPARTMENT OF JUSTICE, Washington, D.C., for
Appellant. F. William Brownell, HUNTON &
WILLIAMS LLP, Washington, D.C., for Appellees.

ON BRIEF: Thomas A. Benson, Sambhav N. Sankar, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellant. F. William Brownell, Mark B. Bierbower, Makram B. Jaber, HUNTON & WILLIAMS LLP, Washington, D.C., Harry M. Johnson III, George P. Sibley III, HUNTON & WILLIAMS LLP, Richmond, Virginia, Michael J. Solo, DTE ENERGY COMPANY, Detroit, Michigan, for Appellees. William L. Wehrum, HUNTON & WILLIAMS LLP, Washington, D.C., Jessie J. Rossman, NATURAL RESOURCES DEFENSE COUNCIL, Chicago, Illinois, for Amici Curiae.

ROGERS, J., delivered the opinion of the court, in which DAUGHTREY, J., joined. BATCHELDER, C. J. (pp. 14–16), delivered a separate dissenting opinion.

OPINION

ROGERS, Circuit Judge. Environmental Protection Agency regulations implementing the Clean Air Act require owners and operators of any major pollutant emitting source who plan construction projects at the source to make a preconstruction projection of whether and to what extent emissions from the source will increase following construction. That projection determines whether the project constitutes a “major modification” and thus requires a permit. This appeal raises a single question: can EPA challenge that projection before there is post-construction data to prove or disprove it? The district court held that it cannot and granted summary judgment to

EXHIBIT J

CERTIFICATION OF ETHICS AGREEMENT COMPLIANCE
 Senate Confirmed Presidential Appointee

1. Appointee's Information	a. Appointee's Name:	to be completed by OGE William L. Wehrum
	b. Position Title:	to be completed by OGE Assistant Administrator for the Office of Air and Radiation
	c. Agency:	to be completed by OGE U.S. Environmental Protection Agency
	d. Date Ethics Agreement Signed:	to be completed by OGE August 28, 2017
	e. Date Confirmed:	to be completed by OGE November 9, 2017
	f. Due Date for Certification of Ethics Agreement Compliance:	to be completed by OGE February 14, 2018
2. Resignations	<i>I completed all of the resignations indicated in my ethics agreement before I assumed the duties of my current government position.</i>	<input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
3. Divestitures	a. <i>I have completed all of the divestitures indicated in my ethics agreement. I also understand that I may not repurchase these assets during my appointment without OGE's prior approval.</i>	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A
	b. <i>I have filed a period transaction report, or periodic transaction reports, (OGE Form 278-T) to disclose the completion of these agreed upon divestitures.</i>	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A Filing Date(s) of OGE Form 278-T Report(s):
4. Managed Accounts	<i>If I have a managed account or use the services of an investment professional, I have notified the manager or professional of the limitations indicated in my ethics agreement. In addition, I am continuing to monitor purchases.</i>	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A
5. Interim Recusals	<i>I complied with my interim recusal obligations pending the divestitures required by my ethics agreement.</i>	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A

<p>6. Recusals</p> <p>(Note: These factual statements describe the appointee's current status. They are not intended to modify ethics agreement commitments or create new recusal obligations.)</p>	<p>a. I am recusing from particular matters in which I know I have a <u>personal or imputed</u> financial interest directly and predictably affected by the matter, unless I have received a waiver or qualify for a regulatory exemption.</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No <input checked="" type="radio"/> N/A</p>
	<p>b. I am recusing from particular matters in which any former employer or client I served in the past year is a party or represents a party, unless I have been authorized under 5 C.F.R. § 2635.502(d).</p>	<p><input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A</p>
	<p>c. I am recusing from particular matters in which any former employer or client I served in the two years prior to my appointment is a party or represents a party, unless I have received a waiver under Exec. Order 13770.</p>	<p><input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A</p>
<p>7. Waivers and Authorizations</p>	<p>a. I received a waiver pursuant to 18 U.S.C. § 208.</p> <p>If yes, indicate the date of the waiver and indicate the financial interest covered by the waiver.</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p> <p>Date: Financial interest:</p>
	<p>b. I received a waiver pursuant to Executive Order 13770.</p> <p>If yes, indicate the date of the waiver and the subject of the waiver (i.e., applicable paragraph of the ethics pledge, parties, particular matters, specific issue areas, as applicable).</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p> <p>Date: Subject:</p>
	<p>c. I received an authorization pursuant to 5 C.F.R. § 2635.502(d).</p> <p>If yes, indicate date of authorization and identify the covered person(s) as to whom you have been authorized (e.g., former employer, former client, spouse's employer, spouse's current client, etc.).</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p> <p>Date: Covered person(s):</p>
	<p>d. I received a waiver pursuant to 5 C.F.R. § 2635.503(c).</p> <p>If yes, indicate the date of the waiver and identify the former employer or payer.</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p> <p>Date: Former employer or payer:</p>

12/19/17

William L. Wehrum

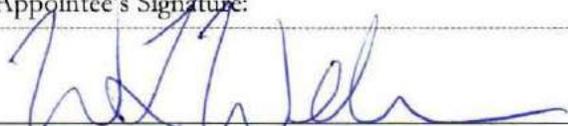
8. Payments, Accelerations, or Divestitures Required to be Completed Prior to Entering Government Service	Mark this box if not applicable: <input type="checkbox"/>	a. <i>If I committed that I would forfeit a financial interest or payment, unless it was received or accelerated prior to my assumption of the duties of the government position:</i>	<input checked="" type="radio"/> <i>I received it (or it was accelerated) prior to my assumption of the duties of the position.</i> <input type="radio"/> <i>I received it (or it was accelerated) after my assumption of the duties of the position.</i> <input type="radio"/> <i>I forfeited it.</i>
		b. Financial interest or payment at issue:	
9. Requirements for Regular Appointees	<i>I have completed my initial ethics briefing, pursuant to 5 C.F.R. § 2638.305.</i> If you are a Special Government Employee (SGE) or career Foreign Service Officer (FSO), select N/A.		<input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
	<i>I have signed the ethics pledge pursuant to Executive Order 13770.</i> If you are a SGE or career FSO or previously signed the pledge, select N/A.		<input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
10. Additional Ethics Agreement Requirements	to be completed by OGE:	to be completed by appointee: <i>I am complying with these requirements as described in the adjacent box.</i>	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A
11. Comments of Appointee			
Any intentionally false or misleading statement or response provided in this certification is a violation of law punishable by a fine or imprisonment, or both, under 18 U.S.C. § 1001.			
I certify that the information I have provided is complete and accurate.	Appointee's Signature: 		Date: 12-7-17

EXHIBIT K



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

SEP 29 2018

The Honorable Sheldon Whitehouse
United States Senate
Washington, D.C. 20510

Dear Senator Whitehouse:

On behalf of the U.S. Environmental Protection Agency (EPA), I am writing in response to your letters of April 25, 2018 and September 4, 2018, in which you sought information regarding the recusal statement of EPA's Assistant Administrator for Air and Radiation, William L. Wehrum.

I want to assure you that EPA has taken diligent steps to ensure that Mr. Wehrum has been advised of his ethics obligations. Following Mr. Wehrum's initial ethics training on November 14, 2017, my staff in the Ethics Law Office in the Office of General Counsel (OGC/Ethics) and I have met with Mr. Wehrum in person, communicated with him via email correspondence and the telephone, and coordinated with his staff about his ethics obligations. As part of these discussions and consistent with our responsibilities found at 5 C.F.R. §§ 2638.305(f)(2) and (3), OGC/Ethics explained his recusal obligations, the importance of a recusal statement, and the other commitments contained in Mr. Wehrum's ethics agreement. OGC/Ethics also counseled Mr. Wehrum about his ethics obligations pursuant to Executive Order 13770 and the Trump Ethics Pledge, which he signed on November 14, 2017. Our counsel included guidance on paragraph 6 of the Pledge, which states that he cannot "participate in any particular matter involving specific parties that is directly and substantially related to [his] former employer or former clients, including regulations and contracts." We have provided him with advice consistent with that offered by the Office of Government Ethics (OGE), including OGE Advisories DO-09-011 (3/26/09) and DO-09-020 (5/26/09), which apply to Exec. Order 13770 pursuant to OGE Legal Advisories LA-17-02 & LA-17-03 (3/20/17).

Since he re-joined EPA, OGC/Ethics has worked with Mr. Wehrum and his staff on a written recusal statement. In my role as the Designated Agency Ethics Official, I personally communicated with Mr. Wehrum about the importance of signing a recusal statement. Mr. Wehrum initially chose to use other tools that he deemed effective in helping him comply with the ethics requirements, such as use of a screening official. OGC/Ethics continued to work with him and his staff and recently Mr. Wehrum completed and signed the enclosed recusal statement. His statement formally memorializes Mr. Wehrum's understanding of his obligation to recuse himself from certain matters involving his former employer or former clients.

To date, Mr. Wehrum has not received any waivers or authorizations issued pursuant to Executive Order 13770, 18 U.S.C. § 207(b)(1), or 5 C.F.R. § 2635.502(d). As described in his

recusal statement, for meetings or invitations involving his former employer or former clients, Mr. Wehrum's staff coordinates with OGC/Ethics, particularly when paragraph 6 of the Ethics Pledge might be implicated. When OGC/Ethics is consulted by Mr. Wehrum or his staff on meetings involving his former employer or former clients, we provide appropriate counsel and case-specific advice based on the subject matter of the meeting, the attendees, the location, the purpose, the capacity under which the individuals or entities are present, and any other relevant information.

Mr. Wehrum filed a Certification of Ethics Agreement Compliance with the OGE dated December 7, 2017. Originally, he answered "no" in response to the form's query on recusals related to financial conflicts of interest. He made a clarifying edit to the form on December 19, 2017, changing his response from "no" to "N/A." Enclosed is a further-updated version of that form that includes a comment Mr. Wehrum added on September 27, 2018, explaining that at the time he signed the form he did not have any financial conflicts of interest from which to recuse, so he did not believe that answering "no" was sufficient to explain his situation. Because he has no existing financial conflicts, nor does he expect to have any in the future, he explains that his answer meant that this question does not apply to his individual situation. My staff provided the recently-updated form to OGE.

With respect to the documents that you requested, EPA has a centralized search currently underway that it expects to yield documents responsive to your request. The agency anticipates releasing those documents to you on a rolling basis, as they become available.

Finally, I have resigned from EPA and my role as the Designated Agency Ethics Official, effective September 30, 2018, to pursue a career transition to the private sector. If I can be of assistance after that date, however, you may contact me through the agency's Office of Congressional and Intergovernmental Affairs. I appreciate your sustained interest in, and support of, a strong ethics program at EPA. If you have further questions for EPA, please contact Kristien Knapp in the Office of Congressional and Intergovernmental Relations at (202) 564-3277 or Knapp.Kristien@epa.gov.

Sincerely,



Kevin S. Minoli
Designated Agency Ethics Official &
Principal Deputy General Counsel

Enclosures

cc: The Honorable John Barrasso
Chairman, Senate Environment and Public Works Committee

EXHIBIT L

CERTIFICATION OF ETHICS AGREEMENT COMPLIANCE Senate Confirmed Presidential Appointee		
1. Appointee's Information	a. Appointee's Name:	<small>to be completed by OGE</small> William L. Wehrum
	b. Position Title:	<small>to be completed by OGE</small> Assistant Administrator for the Office of Air and Radiation
	c. Agency:	<small>to be completed by OGE</small> U.S. Environmental Protection Agency
	d. Date Ethics Agreement Signed:	<small>to be completed by OGE</small> August 28, 2017
	e. Date Confirmed:	<small>to be completed by OGE</small> November 9, 2017
	f. Due Date for Certification of Ethics Agreement Compliance:	<small>to be completed by OGE</small> February 14, 2018
2. Resignations	<i>I completed all of the resignations indicated in my ethics agreement before I assumed the duties of my current government position.</i>	<input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
3. Divestitures	a. <i>I have completed all of the divestitures indicated in my ethics agreement. I also understand that I may not repurchase these assets during my appointment without OGE's prior approval.</i>	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A
	b. <i>I have filed a period transaction report, or periodic transaction reports, (OGE Form 278-T) to disclose the completion of these agreed upon divestitures.</i>	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A Filing Date(s) of OGE Form 278-T Report(s):
4. Managed Accounts	<i>If I have a managed account or use the services of an investment professional, I have notified the manager or professional of the limitations indicated in my ethics agreement. In addition, I am continuing to monitor purchases.</i>	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A
5. Interim Recusals	<i>I complied with my interim recusal obligations pending the divestitures required by my ethics agreement.</i>	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A

William L. Wehrum

<p>6. Recusals</p> <p><i>(Note: These factual statements describe the appointee's current status. They are not intended to modify ethics agreement commitments or create new recusal obligations.)</i></p>	<p>a. I am recusing from particular matters in which I know I have a <u>personal or imputed</u> financial interest directly and predictably affected by the matter, unless I have received a waiver or qualify for a regulatory exemption.</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No <input checked="" type="radio"/> N/A</p>
	<p>b. I am recusing from particular matters in which any former employer or client I served in the past year is a party or represents a party, unless I have been authorized under 5 C.F.R. § 2635.502(d).</p>	<p><input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A</p>
	<p>c. I am recusing from particular matters in which any former employer or client I served in the two years prior to my appointment is a party or represents a party, unless I have received a waiver under Exec. Order 13770.</p>	<p><input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A</p>
<p>7. Waivers and Authorizations</p>	<p>a. I received a waiver pursuant to 18 U.S.C. § 208.</p> <p>If yes, indicate the date of the waiver and indicate the financial interest covered by the waiver.</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p> <p>Date: _____ Financial interest: _____</p>
	<p>b. I received a waiver pursuant to Executive Order 13770.</p> <p>If yes, indicate the date of the waiver and the subject of the waiver (i.e., applicable paragraph of the ethics pledge, parties, particular matters, specific issue areas, as applicable).</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p> <p>Date: _____ Subject: _____</p>
	<p>c. I received an authorization pursuant to 5 C.F.R. § 2635.502(d).</p> <p>If yes, indicate date of authorization and identify the covered person(s) as to whom you have been authorized (e.g., former employer, former client, spouse's employer, spouse's current client, etc.).</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p> <p>Date: _____ Covered person(s): _____</p>
	<p>d. I received a waiver pursuant to 5 C.F.R. § 2635.503(c).</p> <p>If yes, indicate the date of the waiver and identify the former employer or payer.</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p> <p>Date: _____ Former employer or payer: _____</p>

12/19/17

William L. Wehrum

<p>8. Payments, Accelerations, or Divestitures Required to be Completed Prior to Entering Government Service</p>	<p>Mark this box if not applicable: <input type="checkbox"/></p>	<p>a. If I committed that I would forfeit a financial interest or payment, unless it was received or accelerated prior to my assumption of the duties of the government position:</p>	<p><input checked="" type="radio"/> I received it (or it was accelerated) <u>prior to</u> my assumption of the duties of the position. <input type="radio"/> I received it (or it was accelerated) <u>after</u> my assumption of the duties of the position. <input type="radio"/> I forfeited it.</p>
<p>9. Requirements for Regular Appointees</p>	<p><i>I have completed my initial ethics briefing, pursuant to 5 C.F.R. § 2638.305.</i> If you are a Special Government Employee (SGE) or career Foreign Service Officer (FSO), select N/A. <i>I have signed the ethics pledge pursuant to Executive Order 13770.</i> If you are a SGE or career FSO or previously signed the pledge, select N/A.</p>	<p>b. Financial interest or payment at issue:</p>	<p><input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A <input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A</p>
<p>10. Additional Ethics Agreement Requirements</p>	<p>to be completed by OGE:</p>	<p>to be completed by appointee:</p>	<p><i>I am complying with these requirements as described in the adjacent box.</i> <input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A</p>
<p>11. Comments of Appointee</p>	<p><i>I answered "N/A" to No. 6 because I have no existing conflicts and I do not expect to have any in the future, so this question does not apply to my situation.</i> <i>WJ Wehrum 9.27.18</i></p>		
<p>Any intentionally false or misleading statement or response provided in this certification is a violation of law punishable by a fine or imprisonment, or both, under 18 U.S.C. § 1001.</p>			
<p><i>I certify that the information I have provided is complete and accurate.</i></p>	<p>Appointee's Signature: <i>WJ Wehrum</i></p>	<p>Date: <i>12-7-17</i></p>	

**OGE STATEMENT REGARDING
CERTIFICATION OF ETHICS AGREEMENT COMPLIANCE**
Senate Confirmed Presidential Appointee

Appointee's Information	Appointee's Name:	William I. Wehrum
	Position Title:	Assistant Administrator for the Office of Air and Radiation
	Agency:	U.S. Environmental Protection Agency
	Date Ethics Agreement Signed:	August 28, 2017
	Date Confirmed:	November 9, 2017
	Due Date for Certification of Ethics Agreement Compliance:	February 14, 2018

Statement

OGE received the Assistant Administrator's original Certification of Ethics Agreement Compliance (Certification) on January 16, 2018. The Assistant Administrator submitted a revised Certification on September 27, 2018. The only revision to the Certification was the Assistant Secretary's comment in Box 11, Comments of Appointee.

Date of Statement: October 10, 2018

EXHIBIT M

To: Lewis, Josh[Lewis.Josh@epa.gov]
From: Gunasekara, Mandy
Sent: Mon 12/4/2017 3:19:06 PM
Subject: Fwd: NSR Memo
[NSR policy memo draft 2017 12 2 edits.docx](#)
[ATT00001.htm](#)

FYI

Sent from my iPhone

Begin forwarded message:

From: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
Date: December 4, 2017 at 9:02:53 AM EST
To: "Bodine, Susan" <bodine.susan@epa.gov>, "Patrick Traylor" (traylor.patrick@epa.gov) <traylor.patrick@epa.gov>
Cc: "Jackson, Ryan" <jackson.ryan@epa.gov>, "Dravis, Samantha" <dravis.samantha@epa.gov>, "Schwab, Justin" <schwab.justin@epa.gov>
Subject: NSR Memo

Good Morning –

Attached is the latest version of the NSR Memo pertaining to the issues at issue in the DTE case. I thought we may have more time, but know now that the cert hearing is planned for Wednesday. This memo needs to go out before. I'd like to send it with the Administrator this evening for him to review and then follow-up tomorrow with a meeting/discussion if necessary. I gave Hayley a heads up and she said we can work in time. Please run the traps on this from your end. I apologize for the short notice, but will move items around and make myself available to discuss this afternoon if necessary.

Thanks,

Mandy

Mandy M. Gunasekara

Principal Deputy Assistant Administrator

EXHIBIT N

To: Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]; White, Elizabeth[white.elizabeth@epa.gov]; Lewis, Josh[Lewis.Josh@epa.gov]
Sent: Thur 12/7/2017 3:47:45 PM
Subject: RE: NSR Memo

Thanks, Sam.

Elizabeth and Josh – do either of you need anything else to get this done? Give me a c

From: Dravis, Samantha
Sent: Thursday, December 7, 2017 10:46 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>
Subject: Re: NSR Memo

Let's get this autopenned thank you

Sent from my iPhone

On Dec 7, 2017, at 10:15 AM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

Attached is the final version of the NSR memo discussed with the Administrator yesterday. He would like to get this out today. Can we go ahead with auto-pen, since he's at the hearing? Once this is signed, we can send it out to the RAs and post to the website. I'm cc'ing Josh Lewis who is helping to coordinate.

Mandy M. Gunasekara

Principal Deputy Assistant Administrator

Office of Air and Radiation

US Environmental Protection Agency

<NSR policy memo_FINAL for Admin Signature 2017 12 07.docx>

EXHIBIT O

To: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
From: Lewis, Josh
Sent: Thur 12/7/2017 6:09:38 PM
Subject: RE: Signed NSR Memo

Got it, and will do

From: Gunasekara, Mandy
Sent: Thursday, December 07, 2017 12:36 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>
Subject: Fwd: Signed NSR Memo

Hold tight until after the energy and comment hearing. Please have this ready for posting online once the hearing wraps up.

Sent from my iPhone

Begin forwarded message:

From: "Hope, Brian" <Hope.Brian@epa.gov>
To: "Jackson, Ryan" <jackson.ryan@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
Cc: "White, Elizabeth" <white.elizabeth@epa.gov>
Subject: Signed NSR Memo

Let me know if you need anything else. Thanks.

- Brian

Brian T. Hope

Deputy Director

Office of the Executive Secretariat

Office of the Administrator

(202) 564-8212

EXHIBIT P

To: Bodine, Susan[bodine.susan@epa.gov]; Traylor, Patrick[traylor.patrick@epa.gov]
From: Schwab, Justin
Sent: Sat 12/9/2017 6:48:59 PM
Subject: Fwd: NSR DTE case - Petitioners sent letter to Supreme Court on EPA memo
[LetterWithNSRguidance-c.pdf](#)
[ATT00001.htm](#)

ICYMI

Sent from my iPhone

Begin forwarded message:

From: "Doster, Brian" <Doster.Brian@epa.gov>
To: "Schwab, Justin" <Schwab.Justin@epa.gov>, "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>, "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>
Cc: "Williams, Melina" <Williams.Melina@epa.gov>
Subject: NSR DTE case - **Petitioners sent letter to Supreme Court on EPA memo**

FYI, DTE's counsel sent the attached to the Supreme Court enclosing EPA's NSR memo.



HUNTON & WILLIAMS LLP
2200 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20037-1701

TEL 202 • 955 • 1500
FAX 202 • 778 • 2201

F. WILLIAM BROWNELL
DIRECT DIAL: 202 • 955 • 1555
EMAIL: fbrownell@hunton.com

FILE NO: 53788.000042

December 8, 2017

By Hand

The Honorable Scott S. Harris
Clerk of the Supreme Court
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543-0002

Re: Case No. 17-170, *DTE Energy Company, et al. v. United States*

Dear Mr. Harris:

In its brief in opposition in the above-captioned case, the United States states that "the EPA is currently reviewing its New Source Review policies and regulations" and that "[t]hat review may result in changes." Br. for the United States in Opp'n at 17 (Nov. 1, 2017). A memorandum released by EPA late yesterday addressing the initial results of that review is enclosed.

Sincerely,

F. William Brownell
Counsel of Record for Petitioners
DTE Energy Company and Detroit Edison Company

Enclosure

cc: Noel J. Francisco
Michael Soules
Cynthia Rapp, Deputy Clerk

ATLANTA AUSTIN BANGKOK BEIJING BRUSSELS CHARLOTTE DALLAS HOUSTON LONDON LOS ANGELES
MIAMI NEW YORK NORFOLK RALEIGH RICHMOND SAN FRANCISCO TOKYO TYSONS WASHINGTON

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ED_001598_00025378

EXHIBIT Q

To: Wehrum, Bill[Wehrum.Bill@epa.gov]; Harlow, David[harlow.david@epa.gov]
Cc: Dominguez, Alexander[dominguez.alexander@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]
From: Gunasekara, Mandy
Sent: Tue 12/5/2017 1:06:07 PM
Subject: NSR Memo
[NSR Memo_Redacted Version 2017 12 04.pdf](#)

Hi Bill and David,

Attached is a memo pertinent to tomorrow's NSR discussion. I have redacted the potentially offending language given your recusal issues and had Justin double check to ensure I got everything out. What you will see is our clarification of the actual-to-projected actual applicability test in determining major modification applicability, which has been a key point of discussion surrounding NSR reform efforts.

Bill – I'll look to call you closer to 9 pm to download on RTBT.

Have a good night!

Mandy

Mandy M. Gunasekara

Principal Deputy Assistant Administrator

Office of Air and Radiation

US Environmental Protection Agency

EXHIBIT R

To: Doster, Brian[Doster.Brian@epa.gov]; Burke, Marcella[burke.marcella@epa.gov]
Cc: Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]; Schmidt, Lorie[Schmidt.Lorie@epa.gov]
From: Schwab, Justin
Sent: Tue 12/5/2017 1:56:00 PM
Subject: RE: Meeting today with Wehrum on NSR - May address [Ex. 5 - Deliberative Process]

Thank you, Brian. Please forward me the invitation.

From: Doster, Brian
Sent: Tuesday, December 5, 2017 8:48 AM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Burke, Marcella <burke.marcella@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Schmidt, Lorie <Schmidt.Lorie@epa.gov>
Subject: Meeting today with Wehrum on NSR - May address [Ex. 5 - Deliberative Process]

I am writing to let you know about a late-breaking meeting today with Bill Wehrum at 1 p.m. on New Source Review. I understand that the purpose of the meeting is to begin talking about the NSR reform initiatives OAR wants to pursue, and one of those includes [Ex. 5 - Deliberative Process] Another is [Ex. 5 - Deliberative Process] I have heard about 3 other NSR topics that are on OAR's list and we may hear more about Bill's goals for those areas today.

Ex. 5 - Deliberative Process; Attorney-Client Communications

The meeting information is below. If you'd like to put this on your calendar, let me know and I'll forward the meeting invite so you can accept it.

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

From: Wehrum, Bill
Sent: Monday, December 04, 2017 4:32 PM
To: Wehrum, Bill; Gunasekara, Mandy; Harlow, David; Bodine, Susan; Traylor, Patrick; Lewis, Josh; Page, Steve; Koerber, Mike; Harnett, Bill; Wood, Anna; Kornylak, Vera S.; Santiago,

Juan; Wayland, Richard; Dunham, Sarah; Harvey, Reid; Krieger, Jackie; Vetter, Cheryl; Rao, Raj; Srinivasan, Gautam; Schmidt, Lorie; Doster, Brian

Cc: Brooks, Phillip; Chapman, Apple; Kelley, Rosemarie; Schwab, Justin

Subject: NSR Discussion

When: Tuesday, December 05, 2017 1:00 PM-1:45 PM (UTC-05:00) Eastern Time (US & Canada).

Where: WJC-N 5400 + 1-866-299-3188; Participant Code: 202-256-4000

To: Wehrum, Bill; Harlow, David; Gunasekara, Mandy; Lewis, Josh; Page, Steve; Koerber, Mike; Harnett, Bill; Wood, Anna; Kornylak, Vera S.; Santiago, Juan; Wayland, Richard; Dunham, Sarah; Harvey, Reid; Krieger, Jackie; Vetter, Cheryl; Rao, Raj; Doster, Brian; Schmidt, Lorie; Srinivasan, Gautam

EXHIBIT S

To: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
Cc: Schwab, Justin[Schwab.Justin@epa.gov]; Traylor, Patrick[traylor.patrick@epa.gov]; Wehrum, Bill[Wehrum.Bill@epa.gov]
From: Bodine, Susan
Sent: Thur 12/7/2017 5:24:37 PM
Subject: RE: NSR Memo

At a minimum the first two of the three sentences **Ex. 5 - Deliberative Process/Attorney Client Privilege**

Ex. 5 - Deliberative Proce/Attorney Client Privilege

From: Bodine, Susan
Sent: Thursday, December 7, 2017 12:10 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Patrick Traylor (traylor.patrick@epa.gov) <traylor.patrick@epa.gov>
Subject: RE: NSR Memo
Importance: High

Ex. 5 - Deliberative Proce/Attorney Client Privilege

From: Gunasekara, Mandy
Sent: Thursday, December 7, 2017 12:06 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Subject: NSR Memo

Attached is final. Circling back on this **Ex. 5 - Deliberative Proce/Attorney Client Privilege**

Ex. 5 - Deliberative Proce/Attorney Client Privilege

EXHIBIT T

To: Wehrum, Bill[Wehrum.Bill@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
Cc: Traylor, Patrick[traylor.patrick@epa.gov]
From: Bodine, Susan
Sent: Fri 12/8/2017 3:46:19 PM
Subject: NSR memo

I spoke to SP about [Ex. 5 - Deliberative Process/Attorney Client] He suggested [Ex. 5 - Deliberative Process/Attorney Client]
[Ex. 5 - Deliberative Process/Attorney Client]

My recommendation remains: [Ex. 5 - Deliberative Process/Attorney Client]

EXHIBIT U

Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>	Required
Baptist, Erik <baptist.erik@epa.gov>	Required
Bennett, Tate <Bennett.Tate@epa.gov>	Required
Jackson, Ryan <jackson.ryan@epa.gov>	Required

Saturday, December 09, 2017

▲ **Time** 11:30 AM – 1:45 PM
Subject Western Caucus Foundation Panel
Location Wynn Encore Hotel
Show Time As Busy
Categories Green Category

▲ **Time** 2:00 PM – 2:30 PM
Subject Cab to the Airport
Show Time As Busy
Categories Orange Category

▲ **Time** 2:30 PM – 3:00 PM
Subject TSA Security
Show Time As Busy
Categories Orange Category

▲ **Time** 3:00 PM – 3:35 PM
Subject Boarding
Show Time As Busy
Categories Orange Category

▲ **Time** 3:35 PM – 9:01 PM
Subject American Airlines Flight#2536 from Las Vegas to DCA
Location Locator: [REDACTED]
Show Time As Busy
Categories Orange Category

Monday, December 11, 2017

▲ **Time** 7:30 AM – 9:14 AM
Subject Delta Flight #1731 from DCA to Detroit
Location Locator: [REDACTED]
Show Time As Busy
Original and reissued ticket attached
Categories Orange Category

▲ **Time** 9:30 AM – 10:30 AM
Subject Transportation from Detroit (DTW) Airport to Ann Arbor Lab- - Michigan Green Transportation (Confirmation: RES-1FBNFPN)
Location Baggage Claim Area Pick-up
Show Time As Busy
Michigan Green Transportation 1 877-476-8294
Categories Orange Category

▲ **Time** 10:30 AM – 3:30 PM
Subject On Travel || AA Day Trip
Show Time As Busy
Categories Blue Category

▲ **Time** 1:00 PM – 2:00 PM
Subject Agency-wide Sr. Staff Meeting
Location Alma Room
Show Time As Busy

▲ **Time** 3:30 PM – 4:00 PM
Subject DOJ/EPA Weekly
Location 4020A
Show Time As Tentative

▲ **Time** 3:30 PM – 4:30 PM
Subject Transportation from Ann Arbor Lab to Detroit (DTW) Airport -- Michigan Green Transportation
Location Confirmation: (b) (5)
Show Time As Busy
Michigan Green Transportation 1 877-476-8294
Categories Orange Category

▲ **Time** 4:30 PM – 5:00 PM
Subject NSR Memo, conference line, (b) (5), code (b) (5)
Location 3204WJC-South
Show Time As Busy

To: Bodine, Susan; Traylor, Patrick; Bowman, Liz; Wehrum, Bill; Harlow, David; Gunasekara, Mandy; Lewis, Josh; Schwab, Justin

Attendees	Name <E-mail>	Attendance
	Bodine, Susan <bodine.susan@epa.gov>	Organizer
	Traylor, Patrick <traylor.patrick@epa.gov>	Required
	Bowman, Liz <Bowman.Liz@epa.gov>	Required
	Wehrum, Bill <Wehrum.Bill@epa.gov>	Required
	Harlow, David <harlow.david@epa.gov>	Required
	Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>	Required
	Lewis, Josh <Lewis.Josh@epa.gov>	Required
	Schwab, Justin <Schwab.Justin@epa.gov>	Required

▲ **Time** 4:45 PM – 5:30 PM
Subject TSA Security / Boarding
Show Time As Busy
Categories Orange Category

EXHIBIT V

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Gunasekara, Mandy
Sent: Thur 12/7/2017 10:57:21 PM
Subject: NSR Memo Email to RAs
[NSR Policy Memo.12.7.17.pdf](#)
[ATT00001.txt](#)

Memo is attached. There is a "Regional Administrators" list in outlook to send this to all 10. Please cc me (since Bill is recused), Susan, Minoli and Justin. I'd suggest simply stating:

Dear Regional Administrators:
Please see attached for a memo regarding New Source Review the Administrator signed today.
Best,
Ryan

EXHIBIT W

To: Harlow, David[harlow.david@epa.gov]
From: Dominguez, Alexander
Sent: Fri 10/6/2017 2:26:09 PM
Subject: Fwd: NSR Policy Memo
[OGC NSR DTE issue options analysis 10-4 am draft.docx](#)
[ATT00001.htm](#)
[NSR policy memo draft 10-4-17PSLrev.docx](#)
[ATT00002.htm](#)

Sent from my iPhone

Begin forwarded message:

From: "Lewis, Josh" <Lewis.Josh@epa.gov>
Date: October 5, 2017 at 12:42:01 PM EDT
To: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
Cc: "Dominguez, Alexander" <dominguez.alexander@epa.gov>, "Dunham, Sarah" <Dunham.Sarah@epa.gov>
Subject: Fwd: NSR Policy Memo

Ahead of our weekly meeting tomorrow at 9, wanted to send the latest draft NSR policy memo. The other attachment is a document prepared by OGC which is an analysis of options for addressing NSR issues raised by DTE. [Ex. 5 - Deliberative Process](#)

[Ex. 5 - Deliberative Process](#)

Concerning the policy memo, [Ex. 5 - Deliberative Process](#)

Ex. 5 - Deliberative Process

OGC staff attorneys have reviewed this draft. The draft will go shortly to Justin, Lorie, and Gautam for review. [Ex. 5 - Deliberative Process](#)

[Ex. 5 - Deliberative Process](#)

We can talk more tomorrow about this, including next steps.

EXHIBIT X

To: Harlow, David[harlow.david@epa.gov]; Dominguez, Alexander[dominguez.alexander@epa.gov]
From: Gunasekara, Mandy
Sent: Mon 11/27/2017 2:15:43 PM
Subject: NSR Reform Memo
[NSR policy memo draft 10-4-17PSLrev.docx](#)

First one attached.

Mandy M. Gunasekara

Principal Deputy Assistant Administrator

Office of Air and Radiation

US Environmental Protection Agency

EXHIBIT Y

Time 5:15 PM – 5:45 PM
Subject FL/GA Media Interviews re: Hurricane Preparedness
Location Administrator's Office
Reminder 15 minutes
Show Time As Busy
 POC: Liz/Amy

Attendees	Name <E-mail>	Attendance
	[REDACTED] <[REDACTED]>	Organizer
	Bowman, Liz <Bowman.Liz@epa.gov>	Required
	Graham, Amy <graham.amy@epa.gov>	Required
	Lincoln Ferguson (ferguson.lincoln@epa.gov) <ferguson.lincoln@epa.gov>	Required

Friday, September 8, 2017

Time 8:30 AM – 9:15 AM
Subject Radio Interviews re: Hurricane Preparedness
Location Administrator's Office
Reminder 15 minutes
Show Time As Busy

Attendees	Name <E-mail>	Attendance
	[REDACTED] <[REDACTED]>	Organizer
	Bowman, Liz <Bowman.Liz@epa.gov>	Required
	Abboud, Michael <abboud.michael@epa.gov>	Required
	Hewitt, James <hewitt.james@epa.gov>	Required

Time 9:15 AM – 10:15 AM
Subject Briefing: (ESA) Endangered Species Act
Location Administrator's Office
Reminder 15 minutes
Show Time As Busy

Attendees	Name <E-mail>	Attendance
	[REDACTED] <[REDACTED]>	Organizer
	Beck, Nancy <Beck.Nancy@epa.gov>	Required
	Dravis, Samantha <dravis.samantha@epa.gov>	Required
	Baptist, Erik <baptist.erik@epa.gov>	Required
	Bolen, Brittany <bolen.brittany@epa.gov>	Required

Time 10:15 AM – 11:00 AM
Subject Briefings
Location Administrator's Office
Reminder 15 minutes
Show Time As Busy
 Topics to cover will include the following:

Philadelphia Energy Solutions
 Fiat Chrysler
 Colorado Springs
 DTE Energy

Attendees	Name <E-mail>	Attendance
	< >	Organizer
	Traylor, Patrick <traylor.patrick@epa.gov>	Required
	Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>	Required
	Schwab, Justin <schwab.justin@epa.gov>	Required
	Baptist, Erik <baptist.erik@epa.gov>	Optional
	Bodine, Susan <bodine.susan@epa.gov>	Optional

Time 11:00 AM – 11:05 AM
Subject Call with Governor of Puerto Rico
Location Administrator's Office
Reminder 15 minutes
Show Time As Busy
 POC: Troy

Attendees	Name <E-mail>	Attendance
	< >	Organizer
	Lyons, Troy <lyons.troy@epa.gov>	Required
	Lincoln Ferguson (ferguson.lincoln@epa.gov) <ferguson.lincoln@epa.gov>	Required
	Cory, Preston (Katherine) <Cory.Preston@epa.gov>	Required

Time 11:15 AM – 11:45 AM
Subject HOLD: Media Interviews
Location Administrator's Office
Reminder 15 minutes
Show Time As Busy

Attendees	Name <E-mail>	Attendance
	< >	Organizer
	Hewitt, James <hewitt.james@epa.gov>	Required

EXHIBIT Z

To: Lewis, Josh[Lewis.Josh@epa.gov]; Sarah Dunham
(Dunham.Sarah@epa.gov)[Dunham.Sarah@epa.gov]
From: Gunasekara, Mandy
Sent: Tue 9/12/2017 5:57:16 PM
Subject: NSR Memo
Emissions Projection Rule Outline DRAFT.docx

Following up from Friday, attached are a few points regarding the NSR memo I mentioned. This should get things started.

Mandy M. Gunasekara

Senior Policy Advisor for Office of Air and Radiation

Office of the Administrator

US Environmental Protection Agency

EXHIBIT AA

To: Bodine, Susan[bodine.susan@epa.gov]
From: Gunasekara, Mandy
Sent: Fri 9/22/2017 5:54:06 PM
Subject: NSR Memo
Emissions Projection Rule Outline DRAFT.DOCX

Attached is what I sent to program folks last Tuesday.

Mandy M. Gunasekara

Senior Policy Advisor for Office of Air and Radiation

Office of the Administrator

US Environmental Protection Agency

EXHIBIT BB

To: Koerber, Mike[Koerber.Mike@epa.gov]
From: South, Peter
Sent: Tue 10/3/2017 12:44:59 PM
Subject: ONGOING ISSUES
Ongoing OAQPS issues 9 25 17.docx

confirming)—Done for now

Texas Regional Haze – NFRM by Region 6 (CD deadline of Sept 30)

Summary: Region 6 developed final rule which includes a FIP. Texas will not be supportive.

NSR DTE Memo—deliver draft memo on DTE by end of Sept/early Oct

Summary: Ongoing OECA issue relating to NSR applicability.

On 9/27, OGC requested more time to review.

Steve asked Sarah if OK to request ext to 10/4. ~~██████████ OK TO RECEIVE DRAFT~~

Woodheaters Report to Congress – draft report under development (due date is early November)

Summary: OID working on Woodheater RTC. OID will be meeting via call with OCFO on Sept 26. Chebryll on point.

Adam reported it was a quick meeting. We agreed to provide a cover letter and short report, possibly only 1-4 pages, to the appropriations committee. Most of the meeting we discussed format and what to include in an appendix. OID plans to have draft to Martin by 9/29.

RELATED: OID met with our RWH NSPS attorneys, Scott Jordan (OGC) and Simi Bhat (DOJ), late last week. See Chebryll's summary of meeting. Simi communicated that she needs a decision from EPA on the PFI-related questions by October 6th if possible. This would give her time to communicate EPA's positions to PFI, negotiate if appropriate, while still giving them time to prepare their legal briefs by the Nov 20 deadline if talks break down. Simi also indicated that she is prepared to brief up to the DOJ politicals so they can prod the EPA politicals, if we haven't heard any definitive response by mid-October and we think it will help the situation.

1-on-1 Follow-ups

- Update to SIP backlog—Mike sent SIP paper to Sarah on 9/18 (updated paper that we used to brief Ryan J in June)—~~Done~~
- CISWI/OSWI—Mike gave Sarah heads up at 9/18 1-on-1—Done
Summary: Sierra Club filed lawsuit in December 2016 claiming EPA failed to promulgate federal plan for CISWI by March 2013, and promulgate federal plan and conduct technology review for OSWI by Dec 2010. Sarah to raise with Mandy—~~MEETING SET FOR 10/4~~
- SIP backlog issue (okay to issue disapprovals) – Mike raised with Sarah at 9/18 1-on-1, Sarah to raise with Mandy
 - iSIP disapprovals—table of 12: Vera noted on 9/20, not 12 SIP disapprovals—prob more (in process)—Mike said to hold on 9/21
- NAAQS related sanctions—Mike gave Sarah heads up at 9/18 1-on-1—Done for now
 - Oct 18, mandatory offset sanctions in effect for 5 areas—4 in PA and 1 in LA, know more on 10/2 (no real impact—states expected to submit plans soon)
 - ~~PREPARE FOR STEVE ON 10/2~~
- Petition on CAFOs – Sarah to raise with Mandy—Mike sent Sarah one pager—Done for now
- O&G FIP Minor Sources in Indian Country—Mike made edits to Chris's materials and sent to

EXHIBIT CC

To: Doster, Brian[Doster.Brian@epa.gov]; Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]
Cc: Williams, Melina[Williams.Melina@epa.gov]
From: Schwab, Justin
Sent: Mon 10/9/2017 10:51:45 PM
Subject: RE: For review: Memos related to DTE NSR case
EDIT NSR policy memo draft 10-4-17PSL.docx

Please find redline/bubbles attached on the "NSR Policy memo_draft" document.

From: Doster, Brian
Sent: Wednesday, October 4, 2017 3:31 PM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Williams, Melina <Williams.Melina@epa.gov>
Subject: For review: Memos related to DTE NSR case

Attached for review are the current drafts of two memos regarding the issues in the DTE NSR litigation, plus a piece of background information. ARLO would like to discuss this topic at our Hot Issues meeting on Thursday.

The first attachment is the current draft of the memo Ex. 5 - Deliberative Process; Attorney-Client Communications
Ex. 5 - Deliberative Process; Attorney-Client Communications
Ex. 5 - Deliberative Process; Attorney-Client Communications
The draft OGC companion memo also identifies some points to consider in evaluating these options. Per the recommendation of Melina and I, Ex. 5 - Deliberative Process; Attorney-Client Communications
Ex. 5 - Deliberative Process; Attorney-Client Communications The third attachment is a one-page outline that was provided to OAR as a guide to develop the primary draft memo (first attachment). I have added highlights to the third attachment to show the 4 key points that OAR tried to address in the primary memo.

Ex. 5 - Deliberative Process; Attorney-Client Communications

Ex. 5 - Deliberative Process; Attorney-Client Communications

Brian

Brian L. Doster

Assistant General Counsel for NSR, Radiation, and Emergency Response

Air and Radiation Law Office

Office of General Counsel

(202) 564-1932

EXHIBIT DD

To: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
Cc: Dominguez, Alexander[dominguez.alexander@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]
From: Lewis, Josh
Sent: Thur 10/5/2017 4:42:01 PM
Subject: Fwd: NSR Policy Memo
OGC NSR DTE issue options analysis 10-4 am draft.docx
ATT00001.htm
NSR policy memo draft 10-4-17PSLrev.docx
ATT00002.htm

Ahead of our weekly meeting tomorrow at 9, wanted to send the latest draft NSR policy memo. The other attachment is a document prepared by OGC which is an analysis of options for addressing NSR issues raised by DTE (you'll see one of the options is the policy memo)

Concerning the policy memo, we initially drafted a brief document just laying out EPA's

Ex. 5 - Deliberative Process/Attorney-Client

OGC staff attorneys have reviewed this draft. The draft will go shortly to Justin, Lorie, and Gautam for review. Thus far OECA and the Regional Offices have not been engaged.

We can talk more tomorrow about this, including next steps.

EXHIBIT EE

To: Traylor, Patrick[traylor.patrick@epa.gov]
Cc: Bodine, Susan[bodine.susan@epa.gov]
From: Gunasekara, Mandy
Sent: Wed 10/25/2017 6:03:32 PM
Subject: RE: NSR Reform
NSR policy memo draft 10-4-17PSLrev.docx

Yes – see attached. The team sent this to me a couple weeks ago. I have not yet spent significant time on it. Please take a look and let me know your thoughts. Once we get a further down the process, let's plan to meet and discuss.

Best,

Mandy

From: Traylor, Patrick
Sent: Wednesday, October 25, 2017 10:24 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Bodine, Susan <bodine.susan@epa.gov>
Subject: NSR Reform

Mandy:

Would you please include Susan and me at the very earliest opportunity in the distribution for whatever draft memoranda or guidance documents that Ex. 5 - Deliberative Process

-----? We have your one-page outline.

Thanks,

Patrick

Patrick Traylor

Deputy Assistant Administrator

Office of Enforcement and Compliance Assurance

ED_001598_00006793

EXHIBIT FF

Show Time As Busy
Attendees

Name <E-mail>	Attendance
[REDACTED] <[REDACTED]>	Organizer
Kelly, Albert <kelly.albert@epa.gov>	Required

Friday, November 17, 2017

Time 11:15 AM – 12:00 PM
Subject Speaking Engagement: Federalist Society National Lawyers Convention
Location Mayflower Hotel, 1127 Connecticut Ave NW, WDC
Attachments EPA Event Request Form.docx
 Pruitt Invite.pdf
 (ETHICS) Federalist Convention - Friday, November 17.pdf
Reminder 15 minutes

Show Time As Busy
Attendees

Name <E-mail>	Attendance
[REDACTED] <[REDACTED]>	Organizer
Tate Bennett (Bennett.Tate@epa.gov) <Bennett.Tate@epa.gov>	Required
Bowman, Liz <Bowman.Liz@epa.gov>	Required
Hewitt, James <hewitt.james@epa.gov>	Required
Sarah Greenwalt (greenwalt.sarah@epa.gov) <greenwalt.sarah@epa.gov>	Required

Time 12:00 PM – 12:30 PM
Subject HOLD: On the Record Interview
Location Mayflower Hotel
Reminder 15 minutes
Show Time As Busy

Time 2:15 PM – 2:45 PM
Subject Briefing: WOTUS
Location Administrator's Office
Reminder 15 minutes
Show Time As Busy
Attendees

Name <E-mail>	Attendance
[REDACTED] <[REDACTED]>	Organizer
Sarah Greenwalt (greenwalt.sarah@epa.gov) <greenwalt.sarah@epa.gov>	Required
Forsgren, Lee <Forsgren.Lee@epa.gov>	Required
Bodine, Susan <bodine.susan@epa.gov>	Required

Time 3:00 PM – 3:30 PM
Subject Briefing: Oil and Gas Proposed Rule
Location Administrator's Office
Reminder 15 minutes
Show Time As Busy
Attendees

Name <E-mail>	Attendance
[REDACTED] <[REDACTED]>	Organizer
Wehrum, Bill <Wehrum.Bill@epa.gov>	Required
Dravis, Samantha <dravis.samantha@epa.gov>	Required
Schwab, Justin <schwab.justin@epa.gov>	Required
Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>	Required
Ryan Jackson (jackson.ryan@epa.gov) <jackson.ryan@epa.gov>	Required

Time 3:30 PM – 4:00 PM
Subject Briefing: New Source Review
Location Administrator's Office
Reminder 15 minutes
Show Time As Busy
Attendees

Name <E-mail>	Attendance
[REDACTED] <[REDACTED]>	Organizer
Wehrum, Bill <Wehrum.Bill@epa.gov>	Required
Ryan Jackson (jackson.ryan@epa.gov) <jackson.ryan@epa.gov>	Required
Dravis, Samantha <dravis.samantha@epa.gov>	Required
Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>	Required
Lincoln Ferguson (ferguson.lincoln@epa.gov) <ferguson.lincoln@epa.gov>	Required

Monday, November 20, 2017

Time 8:30 AM – 9:15 AM
Subject Briefing: Worker Protection Rule
Location Administrator's Office
Reminder 15 minutes
Show Time As Busy
Attendees

Name <E-mail>	Attendance
[REDACTED] <[REDACTED]>	Organizer

EXHIBIT GG

Time 1:30 PM – 1:50 PM
Subject Call with Tyler Minnich, Toomey's office (Confirmed)
Location Mandy will call Tyler at (b) (6)
Show Time As Busy
Categories Blue Category
Attendees

Name <E-mail>	Attendance
Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>	Organizer
Dominguez, Alexander <dominguez.alexander@epa.gov>	Required

Time 2:00 PM – 3:00 PM
Subject Discussion with Alex
Show Time As Busy
Attendees

Name <E-mail>	Attendance
Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>	Organizer
Dominguez, Alexander <dominguez.alexander@epa.gov>	Required

Time 3:15 PM – 4:15 PM
Subject Briefing: SO2
Location Alm Room
Show Time As Busy
To: (b) (6) Fruit Cal Mathias, Scott; Page, Steve; Wehrum, Bill; Gunasekara, Mandy
Attendees

Name <E-mail>	Attendance
(b) (6) Fruit Cal <(b) (6) scott@epa.gov>	Organizer
Mathias, Scott <Mathias.Scott@epa.gov>	Required
Page, Steve <Page.Steve@epa.gov>	Required
Wehrum, Bill <Wehrum.Bill@epa.gov>	Required
Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>	Required

Thursday, November 30, 2017

Time 8:30 AM – 9:00 AM
Subject Meet with Aaron Flynn and Adrienne Sandoval (Confirmed)
Location Mandy's office
Show Time As Busy
Alex would escort them up from security for this meeting
Categories Blue Category
Attendees

Name <E-mail>	Attendance
Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>	Organizer

Dominguez, Alexander
<dominguez.alexander@epa.gov>

Required

▲

Time	9:30 AM – 10:30 AM
Subject	OTAQ Fuels Weekly
Location	WJC-N 5400 + Video with AA + [REDACTED] Participant Code: [REDACTED] [REDACTED] (6)
Show Time As	Busy
Attendees	
Name <E-mail>	Attendance
Wehrum, Bill <Wehrum.Bill@epa.gov>	Organizer
Grundler, Christopher <grundler.christopher@epa.gov>	Required
Hengst, Benjamin <Hengst.Benjamin@epa.gov>	Required
Argyropoulos, Paul <Argyropoulos.Paul@epa.gov>	Required
Bunker, Byron <bunker.byron@epa.gov>	Required
Dubois, Roland <Dubois.Roland@epa.gov>	Required
Orlin, David <Orlin.David@epa.gov>	Required
Li, Ryland (Shengzhi) <Li.Ryland@epa.gov>	Required
Lewis, Josh <Lewis.Josh@epa.gov>	Required
Charmley, William <charmley.william@epa.gov>	Required
Machiele, Paul <machiele.paul@epa.gov>	Required
Simon, Karl <Simon.Karl@epa.gov>	Required
Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>	Required
Stewart, Gwen <Stewart.Gwen@epa.gov>	Required
Baptist, Erik <baptist.erik@epa.gov>	Required
Harlow, David <harlow.david@epa.gov>	Required
Le, Madison <Le.Madison@epa.gov>	Required
Stahle, Susan <Stahle.Susan@epa.gov>	Optional
Woods, Clinton <woods.clinton@epa.gov>	Required
Burkholder, Dallas <burkholder.dallas@epa.gov>	Required

Korotney, David <korotney.david@epa.gov> Required

Michaels, Lauren <Michaels.Lauren@epa.gov> Required

Parsons, Nick <Parsons.Nick@epa.gov> Required

Cohen, Janet <cohen.janet@epa.gov> Required

Dominguez, Alexander
<dominguez.alexander@epa.gov> Optional

Time 11:00 AM – 11:45 AM

Subject NSR Improvement

Location WJC-N 5400 + Video with OAQPS + [REDACTED] Participant Code:
[REDACTED]

Show Time As Busy

To: Wehrum, Bill; Harlow, David; Gunasekara, Mandy; Lewis, Josh; Page, Steve; Koerber, Mike; Harnett, Bill; Wood, Anna; Kornylak, Vera; Santiago, Juan; Wayland, Richard; Dunham, Sarah; Harvey, Reid; Krieger, Jackie; Vetter, Cheryl; Rao, Raj
Cc: Alston, Lala; Johnson, Yvonnew; Long, Pam

Attendees	Name <E-mail>	Attendance
	Wehrum, Bill <Wehrum.Bill@epa.gov>	Organizer
	Harlow, David <harlow.david@epa.gov>	Required
	Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>	Required
	Lewis, Josh <Lewis.Josh@epa.gov>	Required
	Page, Steve <Page.Steve@epa.gov>	Required
	Koerber, Mike <Koerber.Mike@epa.gov>	Required
	Harnett, Bill <Harnett.Bill@epa.gov>	Required
	Wood, Anna <Wood.Anna@epa.gov>	Required
	Kornylak, Vera S. <Kornylak.Vera@epa.gov>	Required
	Santiago, Juan <Santiago.Juan@epa.gov>	Required
	Wayland, Richard <Wayland.Richard@epa.gov>	Required
	Dunham, Sarah <Dunham.Sarah@epa.gov>	Required
	Harvey, Reid <Harvey.Reid@epa.gov>	Required
	Krieger, Jackie <Krieger.Jackie@epa.gov>	Required

Vetter, Cheryl <Vetter.Cheryl@epa.gov>	Required
Rao, Raj <Rao.Raj@epa.gov>	Required
Alston, Lala <Alston.Lala@epa.gov>	Optional
Johnson, Yvonne W <Johnson.Yvonnew@epa.gov>	Optional
Long, Pam <Long.Pam@epa.gov>	Optional

▲ **Time** 1:00 PM – 1:30 PM
Subject Prep for AHAM Meeting on 12/5
Location WJC-N 5400
Show Time As Busy
To: Wehrum, Bill; Gunasekara, Mandy; Harlow, David; Dominguez, Alex; Dunham, Sarah; Snyder, Carolyn; Newberg, Cindy; Bailey, Ann; Maranion, Bella

Attendees

Name <E-mail>	Attendance
Wehrum, Bill <Wehrum.Bill@epa.gov>	Organizer
Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>	Required
Harlow, David <harlow.david@epa.gov>	Required
Dominguez, Alexander <dominguez.alexander@epa.gov>	Required
Dunham, Sarah <Dunham.Sarah@epa.gov>	Required
Snyder, Carolyn <Snyder.Carolyn@epa.gov>	Required
Newberg, Cindy <Newberg.Cindy@epa.gov>	Required
Bailey, Ann <Bailey.Ann@epa.gov>	Required
Kaplan, Katharine <Kaplan.Katharine@epa.gov>	Optional

▲ **Time** 1:30 PM – 1:45 PM
Subject Cab to Hunton
Show Time As Busy
Categories Orange Category

▲ **Time** 1:45 PM – 2:30 PM
Subject Speak on Hunton Meeting Panel - Which Way Does the Wind Blow: Priorities and Developments in Air Quality and Climate Change Regulation (Confirmed)
Location Hunton & Williams Offices, 2200 Pennsylvania Avenue NW - 9th Floor
Show Time As Busy
Categories Green Category

EXHIBIT HH

From: Traylor, Patrick
Location: WJCS-3216
Importance: Normal
Subject: NSR Memorandum Discussion
Start Date/Time: Mon 12/4/2017 6:00:00 PM
End Date/Time: Mon 12/4/2017 7:00:00 PM

To: Traylor, Patrick; Bodine, Susan; Schwab, Justin; Gunasekara, Mandy
Cc: Atkinson, Emily

EXHIBIT II

To: Ferguson, Lincoln[ferguson.lincoln@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]
From: Gunasekara, Mandy
Sent: Tue 12/5/2017 12:24:09 AM
Subject: NSR Memo
[NSR policy memo draft 2017 12 2 edits.docx](#)

See attached for SP review.

Mandy M. Gunasekara

Principal Deputy Assistant Administrator

Office of Air and Radiation

US Environmental Protection Agency

EXHIBIT JJ

To: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
Cc: Traylor, Patrick[traylor.patrick@epa.gov]; Bodine, Susan[bodine.susan@epa.gov]; Burke, Marcella[burke.marcella@epa.gov]; Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]; Doster, Brian[Doster.Brian@epa.gov]; Williams, Melina[Williams.Melina@epa.gov]
From: Schwab, Justin
Sent: Wed 12/6/2017 10:24:02 PM
Subject: NSR memo - OGC comments
NSR.policy memo draft 2017 12 2 edits + mkw bld ijs.docx

Dear Mandy,

Please find attached a redline with comment bubbles.

Ex. 5 - Deliberative Process/Attorney Work Product/Attorney Client Privilege

Ex. 5 - Deliberative Process/Attorney Work Product/Attorney Client Privilege

Please let me know if you have any questions.

Best,

Justin

EXHIBIT KK

To: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
Cc: Bodine, Susan[bodine.susan@epa.gov]; Traylor, Patrick[traylor.patrick@epa.gov]
From: Schwab, Justin
Sent: Thur 12/7/2017 4:52:54 PM
Subject: NSR memo--general OGC thoughts on legal risk

(Expanding on some of the comments on the draft.)

Ex. 5 - Deliberative Process/Attorney Work Product/Attorney Client Privilege

Ex. 5 - Deliberative Process/Attorney Work Product/Attorney Client Privilege

EXHIBIT LL

To: Wilcox, Jahan[wilcox.jahan@epa.gov]
Cc: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
From: Bowman, Liz
Sent: Thur 12/7/2017 5:43:38 PM
Subject: FW: Signed NSR Memo
[NSR Policy Memo.12.7.17.pdf](#)
[ATT00001.htm](#)

Can you please help us get this to a few people who might be interested, after the Hearing concludes? I plan to send it to Mary Kissel on the WSJ editorial page, please send it to the reporters you suggest. The program has indicated they are going to give it to Politico, E&E, etc. as soon as they get a copy, so if you want to provide it some folks after the hearing, that would be appreciated. Background on the issue is below:

Draft Desk Statement

Dec. 7 DTE/NSR Memo

Ex. 5 - Deliberative Process

EXHIBIT MM



HUNTON & WILLIAMS LLP
2200 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20037-1701

TEL 202 • 955 • 1500
FAX 202 • 778 • 2201

ANDREA FIELD
DIRECT DIAL: 202 • 955 • 1558
EMAIL: afield@hunton.com

May 12, 2017

Samantha K. Dravis
Regulatory Reform Officer and
Associate Administrator, Office of Policy
U.S. Environmental Protection Agency
Mail Code 1803A
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Submitted via Electronic Mail and via Regulations.gov

**Utility Air Regulatory Group's Response to EPA's Request for Comments on
Regulations Appropriate for Repeal, Replacement, or Modification Pursuant to
Executive Order 13777, 82 Fed. Reg. 17,793 (Apr. 13, 2017):
Docket ID No. EPA-HQ-OA-2017-0190**

Dear Ms. Dravis:

This letter is submitted in response to the U.S. Environmental Protection Agency's ("EPA" or "Agency") April 13, 2017 *Federal Register* notice¹ seeking input from the public to inform the Agency's evaluation of existing regulations that may meet the criteria outlined in Executive Order 13777² for repeal, replacement, or modification. More specifically, the notice asks commenters to identify regulations that, among other things, "are outdated, unnecessary, or ineffective; impose costs that exceed benefits; . . . or . . . derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified,"³ in accordance with the language of Executive Order 13777.

The Utility Air Regulatory Group ("UARG") recommends that EPA examine whether the regulations identified below meet the criteria of Executive Order 13777. UARG is a not-for-profit association of individual electric generating companies and national trade associations. Since 1977, UARG has participated on behalf of certain of its members collectively in scores of Clean Air Act ("CAA" or "Act") administrative proceedings that affect electric generators and in litigation arising from those proceedings. UARG's 40 years of participation in CAA rulemakings and litigation has provided it unique insight as to which CAA programs are

¹ 82 Fed. Reg. 17,793 (Apr. 13, 2017).

² 82 Fed. Reg. 12,285 (Mar. 1, 2017).

³ 82 Fed. Reg. at 17,793.

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designed and work as Congress intended, which programs are overly burdensome or costly, and which programs are unlawful or unnecessary.

Many of the recommendations set out below are described in greater detail in materials that UARG has previously filed with EPA and reviewing courts. These materials include rulemaking comments, technical expert reports, petitions for reconsideration, and court pleadings concerning Agency actions that UARG believes to be unlawful, unjustified, or unduly burdensome or costly. UARG appreciates the opportunity to provide input on this matter and invites Agency representatives and others in the administration to meet with UARG concerning the information that we are providing today.⁴

⁴ Dominion Energy does not join in these comments.

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I. Climate Change-Related Rules

A. Clean Power Plan, 80 Fed. Reg. 64,662 (Oct. 23, 2015), codified at 40 C.F.R. Part 60, Subpart UUUU

EPA has already commenced review of this rule to determine whether it is appropriate to “initiate proceedings to suspend, revise or rescind the Clean Power Plan.”⁵ Any replacement or revision to the Clean Power Plan under CAA § 111(d) must adhere to the statutory confines of section 111 of the CAA and must: (i) be based on a “best system of emission reduction” that can be applied at the individual electric generating units subject to the rule; (ii) adhere to the requirement of section 111(d) of the CAA and its implementing regulations that states (and EPA when it is acting on behalf of a state) be allowed to prescribe less stringent standards for certain units on an as-needed, case-by-case basis; and (iii) adhere to the requirement of section 111(d) of the CAA that the remaining useful life of the unit be taken into account. Any replacement rule should also allow for compliance flexibility. Likewise, UARG encourages EPA to acknowledge that once it has promulgated emission guidelines for a source category, the CAA does not give the Agency authority to revisit those guidelines and make them more stringent. *See* Section VI.A below.

B. Carbon Dioxide New Source Performance Standards for New, Modified, and Reconstructed Electric Generating Units, 80 Fed. Reg. 64,510 (Oct. 23, 2015), codified at 40 C.F.R. Part 60, Subpart TTTT

EPA has already commenced review of this rule to determine whether it is appropriate to “initiate proceedings to suspend, revise or rescind the Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Generating Units.”⁶ As part of its comments on EPA’s proposed performance standards and its petition for reconsideration of the final standards, UARG engaged experts to prepare numerous technical reports explaining to EPA why the performance standards EPA proposed (and later finalized) were neither based on adequately demonstrated systems of emission reduction nor achievable; these technical reports are available in the rulemaking docket.⁷

⁵ 82 Fed. Reg. 16,329 (Apr. 4, 2017).

⁶ 82 Fed. Reg. 16,330 (Apr. 4, 2017).

⁷ *See* UARG Comments on Proposed GHG NSPS for New Electric Generating Units (“EGUs”) at Attachments 1-3, 5, 9, 11 (May 9, 2014), EPA-HQ-OAR-2013-0495-9666; UARG Comments on Proposed GHG NSPS for Modified and Reconstructed EGUs at Attachments B, C, G, K (Oct. 16, 2014), EPA-HQ-OAR-2013-0603-0215; UARG Petition for Reconsideration of Final GHG NSPS at Exhibit J (Dec. 22, 2015), EPA-HQ-OAR-2013-0495-11894.

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Any replacement or revision to the greenhouse gas (“GHG”) standards of performance for new, modified, and reconstructed electric generating units must adhere to the statutory confines of section 111 of the CAA, must be based on a “best system of emission reduction” that has been adequately demonstrated, and must be achievable by the individual electric generating units subject to the rule.

Of particular note, any replacement or revision to these standards of performance cannot, for the purposes of determining the “best system of emission reduction,” take into account technology that received funding or tax subsidies under the Energy Policy Act of 2005, as consideration of those technologies for that purpose is prohibited by that Act.

C. Greenhouse Gas Mandatory Reporting Rule (“GHG MRR”), codified at 40 C.F.R. Part 98

Under the fiscal year 2008 Consolidated Appropriations Act, Congress authorized funding for EPA to develop and publish a rule “to require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy of the United States.”⁸ The joint explanatory statement accompanying the legislation directed EPA to use its existing authority under the CAA (e.g., authority under CAA § 114) to develop a mandatory GHG reporting rule covering those upstream production and downstream sources the Administrator deems “appropriate,” and to determine “appropriate thresholds” and frequency for reporting.⁹ Congress also authorized EPA to rely on the “existing reporting requirements for electric generating units under section 821 of the 1990 CAA Amendments.”¹⁰

The reporting program has resulted in facilities expending enormous resources tracking, quality assuring, and reporting vast amounts of information. EPA also continues to spend significant resources for both its own staff and Agency contractors to implement the GHG MRR and its electronic reporting requirements. Since its initial promulgation in October 2009, EPA has revised the regulation dozens of times. Although UARG understands that many of these rule revisions have been directed at correcting errors or simplifying data collection and reporting, the need for so many revisions underscores the complicated nature of the program.

In the past, UARG has questioned the “practical utility”¹¹ of much of the collected information and offered suggestions for simplification of the program. For example, under

⁸ Pub. L. No. 110–161, 121 Stat. 1844, 2128 (2007).

⁹ 74 Fed. Reg. 16,448, 16,454 (Apr. 10, 2009).

¹⁰ *Id.* (internal quotation marks omitted).

¹¹ EPA’s authority to collect information under CAA § 114 is limited by the Paperwork Reduction Act and its implementing regulations. To require a data collection, EPA must

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Subpart C, which covers general “stationary fuel combustion sources,” the term is defined simply as a device that combusts fuel and does not require that the device be used for any particular purpose.¹² As a result, facilities with total emissions above the rule’s applicability threshold must include in their facility-wide calculation miscellaneous combustion devices, like small gas-fired heaters, stoves, lawn mowers, or even hot water heaters. Reporting GHG emissions from such miscellaneous devices is time consuming and the information is of little value. UARG previously asked EPA either to define more narrowly what type of device triggers reporting or to adopt a *de minimis* threshold for reporting emissions from such devices at a stationary fuel combustion source.¹³

Now that the program has been in place for more than seven years, and EPA has provided Congress the information it sought, EPA should review how all of the information being collected has been used and whether the Agency’s assumptions about the information’s “practical utility” are correct. EPA should use this information to tailor the program so that it provides a significant “net benefit” consistent with the objectives of Executive Order 13777. At a minimum, UARG encourages EPA to establish a *de minimis* cut-off for reporting emissions from miscellaneous activities and streamline by “auto-populating” any emissions already being reported under another federal regulatory program, such as CO₂ emissions data collected under 40 C.F.R. Part 75.

In addition, as part of the rulemakings discussed in Sections I.A and I.B above, EPA amended Part 98 to impose additional reporting requirements on owners of electric generating units that transfer captured carbon dioxide to sites reporting under Subpart RR, while also requiring units to transfer their captured carbon dioxide to Subpart RR reporting sites if they wish to rely on carbon capture to meet an applicable emission limit or earn emission reduction credits. EPA should reconsider this requirement, which is unduly burdensome, costly, and does not have any environmental benefit.

demonstrate the “practical utility” of the covered information. 5 C.F.R. § 1320.5(d)(1)(iii). Under 5 C.F.R. § 1320.3(l),

Practical utility means the actual, not merely the theoretical or potential, usefulness of information.... In determining whether information will have ‘practical utility,’ OMB will take into account whether the agency demonstrates actual timely use for the information....

(emphases added).

¹² 40 C.F.R. § 98.30(a).

¹³ See, e.g., UARG Comments on Proposed GHG MRR (June 9, 2009), EPA-HQ-OAR-2008-0508-0493.

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II. Cross-State Air Pollution Rule (“CSAPR”) Update Rule

EPA should reconsider and modify certain aspects of the Cross-State Air Pollution Rule Update for the 2008 Ozone National Ambient Air Quality Standards (“NAAQS”) (known as the “CSAPR Update Rule”).¹⁴ The CSAPR Update Rule establishes stringent “ozone-season” (May-through-September) budgets for additional limits on emissions of nitrogen oxides (“NOx”) from fossil fuel-fired electric generating units, beginning this month, in each of 22 states: Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. The rule is a new regulatory program that imposes costs exceeding any reasonable measure of projected benefits. Indeed, EPA’s own modeling showed that the emission reductions required of upwind states under the CSAPR Update Rule are disproportionate to the relatively limited projected reductions in downwind ozone concentrations that the rule’s emission limits are estimated to produce.¹⁵ Furthermore, if left unmodified, the CSAPR Update Rule threatens jobs in the energy sector because its stringent emission caps can be expected to have the effect of restricting fuel choice.

UARG filed its petition for reconsideration of the CSAPR Update Rule with EPA on December 23, 2016. At least eight other petitions for reconsideration of the rule are pending before EPA.¹⁶ The CSAPR Update Petition describes several aspects of the rule that EPA should reconsider, including: (i) EPA’s reliance on modeling projections to identify downwind areas to be addressed by the rule, in disregard of real-world air quality conditions;¹⁷ (ii) EPA’s use of an unjustifiably low one-percent-of-NAAQS “contribution threshold” to “link” upwind states to downwind receptors and thereby to subject those states to additional regulation under the rule;¹⁸ and (iii) EPA’s failure, in conducting its air quality modeling, to properly account for effects of emissions from non-U.S. sources, which no state has the authority or ability to regulate.¹⁹ Additional background regarding concerns with EPA’s CSAPR Update Rule methodology is provided in the CSAPR Update Petition and in UARG’s rulemaking comments submitted to

¹⁴ 81 Fed. Reg. 74,504 (Oct. 26, 2016).

¹⁵ See UARG’s Petition for Partial Reconsideration of the CSAPR Update Rule at Section X (Dec. 23, 2016) (“CSAPR Update Petition”), https://www.epa.gov/sites/production/files/2017-01/documents/the_utility_air_regulatory_group_0.pdf.

¹⁶ See <https://www.epa.gov/airmarkets/petitions-reconsideration-received-csapr-update>.

¹⁷ CSAPR Update Petition at Sections I & II.

¹⁸ *Id.* at Section III.

¹⁹ *Id.* at Section IV.

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EPA on the December 2015 proposed version of the CSAPR Update Rule.²⁰ In addition, several petitions for judicial review of the CSAPR Update Rule have been filed and are pending in the U.S. Court of Appeals for the D.C. Circuit, including petitions for review filed by UARG, Murray Energy Corporation, many other industry parties, and several states (Alabama, Arkansas, Ohio, Texas, Wisconsin, and Wyoming) (*Wisconsin v. EPA*, No. 16-1406 & consolidated cases).

EPA should promptly reconsider and modify key elements of the CSAPR Update Rule, as identified in UARG's CSAPR Update Petition, to alleviate unnecessary, costly, and counterproductive regulatory burdens.²¹ In doing so, EPA should, for example, consider, propose, and promulgate changes that would increase the levels of states' emission budgets based on corrections to and further review of the existing rule, as well as changes that would appropriately reform EPA's methodology for addressing interstate transport, as described in the attached CSAPR Update Petition and UARG's rulemaking comments.²² In addition, based on its review and reconsideration of the CSAPR Update Rule and its methodology, EPA should, to the extent supported by appropriate analysis, issue a determination identifying states that currently are subject to that Rule but that do not contribute significantly to nonattainment of the 2008

²⁰ See UARG Comments on Proposed CSAPR Update Rule (Feb. 1, 2016), EPA-HQ-OAR-2015-0500-0253. UARG also submitted supplemental comments on June 1, June 9, and August 16, 2016, addressing information that became available after the deadline for submitting comments on the proposed rule. UARG's supplemental comments are attached to the CSAPR Update Petition as Appendix A to that document.

²¹ UARG emphasizes that it will be important for EPA, as it reconsiders the CSAPR Update Rule, to ensure that states may continue to rely on compliance with the NO_x and sulfur dioxide ("SO₂") emission limits in CSAPR itself to satisfy "best available retrofit technology" ("BART") requirements for EGUs under the CAA's visibility protection program, as provided in 40 C.F.R. § 51.308(e)(4) (as promulgated at 77 Fed. Reg. 33,642, 33,656 (June 7, 2012)). See also 81 Fed. Reg. 78,954, 78,961-64 (Nov. 10, 2016) (describing EPA's sensitivity analysis reaffirming the validity of the Agency's determination that participation in CSAPR is a valid BART alternative).

²² As noted in the CSAPR Update Petition, EPA in reviewing and reconsidering the CSAPR Update Rule should not make any change that would result in imposition of an ozone-season NO_x emission budget for any state that is more stringent than the budget for that state under the existing rule. EPA also should not make any change that would affect the continuing validity and effectiveness of the parts of the CSAPR Update Rule in which EPA determined that: (i) Florida, North Carolina, and South Carolina are excluded from the ozone-season NO_x program under both the original CSAPR and the CSAPR Update Rule; and (ii) Georgia is not subject to any obligations with respect to interstate transport for ozone NAAQS beyond those established for that state in CSAPR itself.

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ozone NAAQS in (and do not interfere with maintenance of that NAAQS by) any other state and, consequently, remove those states from coverage under the CSAPR Update Rule.

III. Regional Haze and Other Visibility Regulations

EPA should reconsider and modify certain aspects (described below) of its January 10, 2017 visibility rule revisions that, if left unmodified, will impose unnecessary and counterproductive regulatory costs and other burdens.

Sections 169A and 169B of the Act and EPA regulations at 40 C.F.R. §§ 51.300-51.309 require states to adopt and submit state implementation plans (“SIPs”) to achieve “reasonable progress” toward a national goal of preventing and remedying impairment of visibility in certain national parks and wilderness areas, to the extent visibility impairment in those areas results from manmade air pollution. The CAA’s visibility program generally requires states to evaluate emission sources or source categories for potential emission controls to help achieve reasonable progress. Although Congress intended that states be the principal decisionmakers in this area, in many instances over the past eight years, EPA improperly assumed the states’ role.

During the first “planning period” under the visibility program’s “regional haze” provisions—a period that began in 2008 and will end in 2018—the primary regulatory driver was the CAA’s BART requirement applicable to many EGUs and industrial sources. Now that decisionmaking on BART is complete for most states, the main focus of the upcoming second planning period, which will run from 2018 to 2028, will be implementation of the CAA’s reasonable progress requirement.

EPA substantially amended many elements of its visibility protection regulations in its January 10, 2017 rule.²³ Contrary to the version of that final rule as signed on December 14, 2016 (which would have taken effect 30 days after publication in the *Federal Register*), the final rule as published on January 10 was made effective immediately in order to evade the incoming Administration’s normal regulatory review and its “regulatory freeze” pending that review. The January 10 rule is the subject of three petitions for administrative reconsideration filed with EPA and eleven petitions for review in the U.S. Court of Appeals for the D.C. Circuit (*Texas v. EPA*, No. 17-1021 and consolidated cases). UARG filed a petition for administrative reconsideration²⁴ and a petition for judicial review of the rule. EPA has not yet responded to UARG’s petition for reconsideration. As described below and in the Visibility Rule Petition, the rule has several provisions that EPA should now reconsider and repeal or modify.

²³ 82 Fed. Reg. 3078 (Jan. 10, 2017).

²⁴ See UARG Petition for Partial Administrative Reconsideration of Amended Visibility Requirements (Mar. 13, 2017) (“Visibility Rule Petition”) (attached as Exhibit 1).

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When Congress enacted the CAA's visibility provisions, it made clear the states have broad discretion in implementing the program. The D.C. Circuit recognized that principle in the leading case in this area, *American Corn Growers Ass'n v. EPA*, 291 F.3d 1 (D.C. Cir. 2002). As the program was implemented during the previous administration, however, EPA frequently failed to give the deference that it owed to state decisions and often supplanted reasonable state regulatory plans with more stringent and costly federal control requirements in many states, including Arizona, Arkansas, Nebraska, New Mexico, North Dakota, Oklahoma, Texas, Utah, and Wyoming.

To address these problems, EPA should modify its January 10, 2017 regional haze rules to emphasize the breadth of state authority and to make clear EPA will not second-guess state determinations. EPA should do this by, for instance, making clear that states are free to decide how to consider and assess each of the statutory "reasonable progress" factors, including the costs associated with additional emission controls, and whether visibility improvements resulting from further controls will be substantial enough to warrant imposing those controls.

Although some parts of the January 10, 2017 rule make common-sense revisions that should be preserved—such as a three-year extension, from July 2018 to July 2021, of states' deadline to develop and submit SIPs for the second planning period—other parts of that rule create problems that require additional regulatory action to make necessary modifications. For example, the rule purports to impose on states an improper interpretation—adopted in the last Administration, over many stakeholders' objections—of the relationship between two key elements of the regional haze program: the requirement that states determine and adopt "reasonable progress goals" and the requirement that states identify specific emission control measures to include in "long-term strategies" to achieve reasonable progress. The January 10, 2017 rule requires states to first identify all measures to be included in the state's long-term strategy and then to calculate reasonable progress goals based on the degree of visibility improvement that computer modeling projects those measures will achieve. This aspect of the rule subverts the normal regulatory process by making states' determinations of reasonable progress goals an afterthought and compelling states to consider regulation even where it is unnecessary to stay on track toward reasonable visibility objectives. States should instead be free to develop reasonable progress goals they deem appropriate for a given area and then to determine which specific measures should be included in long-term strategies to achieve those goals.

The January 10, 2017 rule also has several other provisions that EPA should reconsider and modify—including (among others) provisions concerning the "uniform rate of progress" and provisions addressing states' consultation processes with other states and with federal land

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management agencies. A detailed description of how EPA should address and reform these and other aspects of the rule is in UARG's Visibility Rule Petition.²⁵

Consistent with Executive Order 13777, revising EPA's visibility rules as recommended in this comment letter and in UARG's Visibility Rule Petition would alleviate unnecessary regulatory burdens and would be consistent with applicable law. Such revisions would advance the Executive Order's objective of avoiding regulation that unnecessarily imposes costs that outweigh benefits and that inhibit job creation and economic growth.

IV. Regulation of Hazardous Air Pollutants

A. Compliance Provisions of the Mercury and Air Toxics Standards ("MATS") Rule, codified at 40 C.F.R. Part 63, Subpart UUUU

The MATS Rule, regulating hazardous air pollutants from coal and oil-fired electric generating units, is among the most expensive and burdensome rules EPA has ever promulgated. Although the most significant costs associated with the rule derive from purchase, installation, and use of emission control technologies, the task of demonstrating compliance under the rule through periodic performance testing, continuous emissions monitoring, recordkeeping, and reporting also is costly. Some of those compliance demonstration costs are unavoidable, but other costs and burdens are avoidable. Rules that are written clearly and that offer flexibility—where that can be achieved without sacrificing environmental protections—provide the greatest "net benefit." Unfortunately, the MATS Rule has many provisions that are internally inconsistent, ambiguous, or inflexible, each of which adds significantly to the cost and burden of complying with the rule.

Although the current rule is the product of multiple rulemakings over a period of more than 5 years, those successive rulemakings have not fully addressed the rule's overall compliance burdens. The 2012 rule contained numerous errors and problems, many of which are described in detail in UARG's first petition for administrative reconsideration.²⁶ When EPA conducted a reconsideration rulemaking on a few of the issues in the rule pertaining to periods of startup and

²⁵ As noted above and in the Visibility Rule Petition, one provision of the January 10, 2017 rule is an adjustment, from July 2018 to July 2021, of the deadline by which states must submit SIPs for the second planning period. UARG joins numerous states and other stakeholders in supporting that deadline adjustment and urges EPA *not* to reconsider that element of the rule.

²⁶ See UARG Petition for Reconsideration of MATS Rule at Section VI (Apr. 16, 2012), EPA-HQ-OAR-2009-0234-20180.

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shutdown, the Agency's 2014 reconsideration rule created more problems than it resolved.²⁷ UARG raised those problems and other longstanding issues in comments on the Agency's 2015 proposed "Technical Corrections" to the MATS Rule.²⁸ Although EPA resolved some of the issues from the prior two rulemakings in its 2016 Technical Corrections rule, a lot of work remains to be done to make the rule clear, consistent, and appropriately flexible. Even after improvements to the rule in the Technical Corrections, facilities are struggling to interpret and reconcile ambiguous and inconsistent provisions. They also remain subject to overly restrictive requirements for the conduct of performance tests that could result in operation of units that otherwise would not operate, simply to conduct tests to measure emissions. This is unnecessary, costly, and grossly inefficient.

EPA currently is in the middle of another MATS-related rulemaking, this one focused on improving the electronic reporting requirements of the MATS Rule by allowing all reports to be submitted using the Emissions Collection and Monitoring Plan System ("ECMPS") software system already used by utilities under the Acid Rain Program and CSAPR. Although UARG supports that change, UARG members are concerned that the burdens associated with some of the very detailed electronic reporting EPA has proposed will outweigh the cost savings associated with the move to ECMPS. EPA and utilities also cannot successfully implement the electronic reporting requirements without a common understanding of what other substantive compliance provisions in the rule require. As a result, in comments on that proposal, UARG again asked EPA to resolve some of the issues UARG has identified in the existing rule, in addition to requesting changes in the volume of new information EPA has proposed be submitted electronically.²⁹

The MATS Rule has the potential to be less costly. EPA should use the opportunity of the ongoing rulemaking to work with UARG to achieve that end by resolving the issues that remain in the existing rule's compliance procedures, and addressing UARG's concerns about the proposed revisions.

²⁷ EPA ultimately denied reconsideration on the remainder of UARG's 2012 petition without addressing the merits of UARG's concerns regarding the compliance provisions, concluding only that it had met its procedural obligations under CAA § 307(d)(7) to solicit comment on the rule. EPA, Denial of Petitions for Reconsideration of Certain Issues: MATS and Utility NSPS (Mar. 2015), EPA-HQ-OAR-2009-0234-20493.

²⁸ See UARG Comments on Proposed Technical Corrections (Apr. 3, 2015), EPA-HQ-OAR-2009-0234-20483.

²⁹ See UARG Comments on Proposed MATS Electronic Reporting Rule (Nov. 15, 2016), EPA-HQ-OAR-2009-0234-20609.

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B. Renewed Analysis of Potentially Delisting Natural Gas-Fired Stationary Combustion Turbines from Regulation Under CAA Section 112

Gas-fired combustion turbines make up a large and growing portion of the nation's electric generating fleet, and they are an essential part of maintaining electric reliability in the United States. But for over a decade these sources have been in legal limbo with respect to their regulatory status under the CAA's regulatory provisions governing hazardous air pollutants ("HAPs"). The resulting uncertainty presents risks to combustion turbine owners that should be addressed by EPA.

EPA listed stationary combustion turbines as a source category for regulation under section 112 of the Act in 1992 and promulgated emission standards limiting HAP emissions from new and reconstructed turbines in 2004.³⁰ However, almost immediately, EPA proposed to remove natural gas-fired combustion turbines from the list of sources subject to regulation under section 112.³¹ Based on EPA's own analysis and on a petition for delisting submitted by the Gas Turbine Association, the Agency made a preliminary finding that gas-fired turbines meet the CAA's health-protective criteria for delisting.³²

EPA's 2004 analysis found that even using conservative assumptions about exposure and risk, emissions from gas-fired combustion turbines would meet these health-protective statutory criteria. Accordingly, EPA proposed to delist gas-fired turbines from section 112 regulation. Recognizing that it would be irrational to require compliance with a rule it intended to revoke, EPA also issued a stay of the emission standards for gas-fired turbines until the Agency could take final action on its delisting proposal.³³

However, EPA never took final action on its delisting proposal. According to the terms of the stay, if EPA ultimately decides not to delist gas-fired turbines, then the standards will spring into effect for any turbine built after January 2003. This twelve-year waiting period has generated significant regulatory uncertainty for owners of gas-fired combustion turbines, who cannot say for certain whether or not their turbines built in the interim must comply with the emission standards. That uncertainty is compounded by EPA's upcoming Risk and Technology

³⁰ 69 Fed. Reg. 10,512 (Mar. 5, 2004).

³¹ 69 Fed. Reg. 18,327 (Apr. 7, 2004).

³² *Id.*; see CAA § 112(c)(9)(B) (describing criteria).

³³ 69 Fed. Reg. 51,184 (Aug. 18, 2004).

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Review (“RTR”) for stationary combustion turbines: turbine owners cannot be sure whether EPA will further tighten the standards that might ultimately apply if the stay is lifted.³⁴

EPA should revisit its delisting proposal for gas-fired combustion turbines and assess whether those sources still meet the statutory criteria for delisting. The Agency’s previous review showed that gas-fired turbines’ HAP emissions posed minuscule risks to health and the environment. If the delisting criteria are still satisfied, EPA should promptly delist gas-fired turbines from regulation under section 112.³⁵ If gas-fired turbines are not delisted, the Agency should, as appropriate, provide for a transition mechanism for gas-fired turbines constructed since 2003, and EPA should be careful in the RTR proceeding not to impose revised standards that would be unduly burdensome and costly.

C. National Emissions Standards for Hazardous Air Pollutants and New Source Performance Standards for Stationary Reciprocating Internal Combustion Engines (“RICE”), codified at 40 C.F.R. Part 60 Subparts III and JJJJ and 40 C.F.R. Part 63 Subpart ZZZZ

EPA has promulgated a set of interrelated regulations for emissions from RICE units pursuant to both CAA § 111 (new source performance standards) and § 112 (national emissions standards for HAPs). Each set of rules identifies numerous subcategories of internal combustion engines and applies varying requirements to each subcategory based on age, size, fuel type, engine design, use, and other factors. The overlapping regulatory programs and range of subcategories have resulted in a complex set of requirements that can be difficult for source owners to navigate.

The RICE regulations generally require manufacturers to install cost-effective state-of-the-art technology to minimize emissions. UARG agrees that requiring manufacturers (rather than source owners or operators) to install these controls is a reasonable approach to regulation for these sources. But EPA has also promulgated extensive and burdensome testing, maintenance, and record-keeping requirements for owners and operators. These requirements

³⁴ A federal court recently set a March 2020 deadline for EPA to complete its RTR for stationary combustion turbines (along with 19 other source categories). *Cal. Cmty. Against Toxics v. Pruitt*, No. 15-cv-512 (TSC), 2017 WL 978974 (D.D.C. Mar. 13, 2017).

³⁵ Although the D.C. Circuit has ruled that CAA § 112(c)(9)(B)(i) only allows EPA to delist entire source categories (rather than subcategories), *see NRDC v. EPA*, 489 F.3d 1364 (D.C. Cir. 2007), nothing in the Act prohibits EPA from reclassifying gas-fired combustion turbines as a separate source category and delisting them. *See* CAA § 112(c)(1).

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impose substantial costs with little to no benefit. Emissions from RICE sources are already small and do not warrant these onerous and needless regulations.

For example, EPA has placed unnecessary restrictions on the operation of emergency engines. These engines are limited to just 50 hours of non-emergency operation, which count toward the 100 hour annual limit for testing and maintenance. Tracking these independent uses of RICE sources is burdensome and achieves no benefit. In addition, the work practice standards for most RICE sources require servicing the unit more often than manufacturer specifications, which is inefficient and does not provide environmental benefits. Finally, for new Tier 4 engines, EPA adopted redundant requirements for both manufacturers and operators restricting operation when certain emission controls are not working properly, which serve only to hinder operators' ability to address emergency situations. These provisions are burdensome, threaten reliability, and inappropriately place manufacturers in the role of policing emergency situations.

EPA should eliminate the unnecessary requirements applicable to RICE sources and adopt clear, streamlined replacements.

V. Preconstruction Permitting Issues

A. New Source Review (“NSR”) Reform

The Act's NSR program requires major stationary sources to go through an extensive, time-consuming, and costly review and permitting process prior to construction. The NSR program also applies to existing facilities if they are modified in substantial ways and if, as a result, emissions increase by significant amounts (these are known as “major modifications”). The NSR program requires, among other things, that the owner or operator of a proposed new major source or a proposed major modification obtain a pre-construction permit, which will be issued only if the owner/operator (i) demonstrates—normally through air quality modeling—that the proposed major new source or modification will not cause or contribute to a violation of air quality standards; (ii) installs the best available control technologies (“BACT”) to reduce levels of specific regulated pollutants, and (iii) demonstrates that the proposed new source or modification will not cause an adverse impact on air quality-related values in federally protected lands (*e.g.*, national parks or wilderness areas).

For the first two decades of the NSR program, existing sources rarely triggered it. That is because EPA applied it in a way to be triggered only by unusual projects that would expand the capacity of the source—*i.e.*, projects that create *new* sources of emissions. It is also because NSR is so time-consuming and expensive that sources generally avoided activities that would expand their capacities *because* they could trigger NSR.

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Starting in the late 1990s, however, EPA's enforcement arm, in an effort to drive policy, filed and/or threatened a large number of lawsuits to force the installation of controls not otherwise required by the Act. To achieve this goal, EPA asserted in the lawsuits a theory of universal liability: any maintenance project—anything larger than day-to-day activity akin to changing a car's oil—is a "change" that could trigger NSR; and any such "change," if it addresses reliability, availability, or efficiency issues that the plant might have experienced in the recent past, according to the lawsuits, will "increase" total emissions as compared to the recent past and therefore will trigger NSR. More than a decade and half later, these types of lawsuits continue, with no certainty as to how the NSR program will apply to existing plants. For example, courts have reached diametrically opposite conclusions with respect to whether similar projects are considered routine maintenance, repair, and replacement ("RMRR") and thus excluded from NSR.³⁶ EPA's latest revision of the emissions increase provisions has, in a single case, generated five different opinions as to how these provisions should apply.³⁷ At a minimum, the fact that courts—and even judges within the same court—cannot agree on what these regulations mean and how they should apply in particular circumstances highlights the uncertainty these regulations have created and how inefficient their application has been in the recent past.

The NSR rules, as EPA's enforcement arm has sought to apply them to existing facilities for the last decade and a half, discourage—and potentially impose very large costs on—needed projects to maintain and improve existing plants' availability, reliability, safety, and efficiency. Those are precisely the types of projects that maintain American industry's competitiveness and are needed to cost-effectively maintain the reliability of the nation's energy systems. For these reasons, the NSR rules should be revised to remove the uncertainty surrounding their applicability and the perverse incentives they create.

B. Synthetic Minor Sources

Current NSR regulations contain a provision (40 C.F.R. § 52.21(r)(4)) stating that a synthetic minor source—i.e., a source or modification that took operational or other limitations

³⁶ Compare, e.g., *Nat'l Parks Conservation Ass'n v. TVA*, No. 3:01-CV-71, 2010 WL 1291335 (E.D. Tenn. Mar. 31, 2010) (finding economizer and superheater replacements RMRR); with *United States v. La. Generating LLC*, No. 09-100-JJB-CN, 2012 WL 4107129, at *4 (M.D. La. Sept. 19, 2012) (finding reheater replacements not RMRR).

³⁷ See *United States v. DTE Energy Co.*, 845 F.3d 735 (6th Cir. 2017) (three different opinions), 711 F.3d 643 (6th Cir. 2013) (two different opinions). The Sixth Circuit recently denied DTE Energy's petition for rehearing en banc, and currently has pending before it DTE Energy's motion to stay the mandate pending the filing of a petition for certiorari.

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to remain minor—becomes subject to NSR when it “becomes a major source or major modification solely by virtue of relaxation in any enforceable limitation” established in a federally enforceable air permit. This provision was placed in the NSR regulations to prevent circumvention of those regulations—that is, sources taking limitations to avoid NSR review when they are constructed, only to seek to relax these limitations a short period thereafter.

That provision is too broad, however, in that it sweeps into its scope circumstances in which EPA’s concerns about circumvention are clearly not implicated: for example, a situation in which a relaxation of the permit limits may be sought years after the initial construction. As a result, this rule unnecessarily limits production and hinders economic growth, even though the increase in emissions from the later construction is very small and would have a *de minimis* impact (i.e., even though the proposed change itself is not major). In the utility industry, the result is that generation is shifted to higher cost units, unnecessarily increasing costs for ratepayers and, in all likelihood, resulting in more (not less) emissions.

This “relaxation” provision should be revised such that it does not apply in situations in which the risk of circumvention is very unlikely or nonexistent. For example, EPA should consider whether, after a certain amount of time has passed (such as five or more years after a permit containing the operational limitation was issued), the relaxation provision should no longer apply. In these circumstances, a proposed physical or operational change should be analyzed under the base NSR rules, as it would be for any other “true” minor source or modification. Such a change to the regulations would sensibly encourage economic growth while simultaneously ensuring that any physical or operational change that is a major source or modification in its own right would be subject to preconstruction review.

C. Prevention of Significant Deterioration (“PSD”) Significant Emissions Rate for Greenhouse Gases

In *UARG v. EPA*,³⁸ the Supreme Court held that EPA’s so-called “Tailoring Rule” was unlawful in as much as it would apply the PSD and Title V permitting programs to sources based solely on their GHG emissions. Instead, the Court held, EPA’s authority to regulate GHGs under PSD and Title V extends only to “anyway” sources, that is, sources that otherwise would trigger these permitting requirements for non-GHG pollutants. For these “anyway” sources, EPA could require BACT for GHGs “only if the source emits more than a *de minimis* amount of greenhouse gases.”³⁹ On remand, EPA proposed to establish its previous Tailoring Rule threshold, 75,000 tons per year, as that *de minimis* level or “Significant Emissions Rate” (also known as a

³⁸ 134 S. Ct. 2427 (2014).

³⁹ *Id.* at 2449.

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significance threshold).⁴⁰ UARG and its members filed comments supporting EPA's authority to establish a significance threshold on *de minimis* grounds, but objecting to the proposed rule's approach of merely reverse-engineering a pre-determined result—namely, the Tailoring Rule's 75,000 tons per year level—instead of applying the correct legal standard for *de minimis* authority and properly evaluating the facts and data in the record under that standard.⁴¹ Indeed, as UARG's comments explained, applying EPA's historic and well-established approach would have yielded a significance threshold of 320,000 tons per year, four times higher than EPA's predetermined, "preferred" result. Yet, not only did the proposed rule reject any significance threshold higher than 75,000 tons per year, it arbitrarily declared that EPA would not even accept comments on such higher thresholds.

Establishing an appropriate PSD *de minimis* level for GHGs falls squarely in the category of action that would alleviate unnecessary, costly, and counterproductive regulatory burdens. EPA should withdraw the current proposal, and propose a new, higher significance threshold for GHGs.

VI. **New Source Performance Standards ("NSPS") Issues**

A. **Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 81 Fed. Reg. 59,276 (Aug. 29, 2016), codified at 40 C.F.R. Part 60, Subpart Cf**

UARG urges EPA to grant petitions for reconsideration that are pending before the Agency regarding this rule, which revised the existing emissions guidelines for municipal solid waste landfills to make them more stringent. Although EPA possesses authority to amend regulations to correct mistakes or to streamline processes as part of its authority under section 111(d), the Agency lacks authority under that provision to revise its emission guidelines to direct states to make previously promulgated standards of performance for existing sources more stringent. UARG filed comments on EPA's proposed revision to the emission guidelines that are available in the rulemaking docket.⁴² UARG is also challenging this rule (along with other Petitioners) in the U.S. Court of Appeals for the District of Columbia Circuit (*Nat'l Waste & Recycling Ass'n v. EPA*, No. 16-1371 and consolidated cases).

⁴⁰ 81 Fed. Reg. 68,110 (Oct. 3, 2016).

⁴¹ UARG Comments on Proposed Significance Threshold (Dec. 16, 2016), EPA-HQ-OAR-2015-0355-0089.

⁴² See UARG Comments on Proposed Emission Guideline Revisions for Municipal Solid Waste Landfills (Oct. 26, 2015), EPA-HQ-OAR-2014-0451-0198.

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B. Electronic Reporting Under the NSPS, codified at 40 C.F.R. Part 60

New source performance standards establish federally enforceable emission standards and related compliance requirements for new, modified, and reconstructed facilities in specific source categories.⁴³ NSPS are established by EPA, but their implementation and enforcement usually are delegated to state agencies. Reporting requirements for the NSPS are established in the general provisions in Subpart A and in individual subparts. The general provisions currently require duplicate reporting to EPA Regional Offices and delegated state agencies, generally in hard copy (although use of electronic media also is permitted for submissions to state agencies with their consent).

Electronic reporting of information to a centralized data system has the potential to reduce costs and burdens and improve accessibility of information to regulators, the regulated entities, and the public. Unfortunately, EPA's implementation of such reporting under the NSPS has done the opposite.

Beginning in 2009, EPA started inserting into individual subparts of the NSPS a requirement that facilities electronically submit certain reports to EPA using an EPA-designed software system and website that the Agency was in the process of developing. The first of those requirements took effect July 1, 2011.⁴⁴ The requirement to submit existing reports electronically to a central location has not been controversial. However, the software system EPA has specified (called the "Electronic Reporting Tool" or "ERT") is controversial because the program is outdated and difficult to use, and because it requires submission of significant volumes of information that are not necessary to demonstrate compliance with any applicable NSPS.⁴⁵ EPA's failure to relieve sources from existing duplicate paper reporting requirements also generated objections.

⁴³ UARG members own and operate facilities subject to many NSPS subparts, including those applicable to steam generating units (Subparts D, Da, Db, and Dc), combustion turbines (Subparts GG and KKKK), coal preparation plants (Subpart Y), and nonmetallic mineral processing plants (Subpart OOO).

⁴⁴ See, e.g., 40 C.F.R. § 60.49a(v)(4) (Subpart Da), § 60.46b(j)(14) (Subpart Db), § 60.45c(c)(14) (Subpart Dc), § 60.258(d) (Subpart Y).

⁴⁵ EPA has said it is collecting the additional information to assist in development of emission factors. Initially, EPA collected the information simply by mandating use of the ERT software. However, in 2016, EPA revised the general provisions to codify some of those reporting requirements. 81 Fed. Reg. 59,800 (Aug. 30, 2016) (revising 40 C.F.R. § 60.8(f)).

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In 2015, EPA proposed to expand the electronic reporting requirement to all but a few NSPS subparts by revising the general provisions.⁴⁶ UARG's objections to the ERT and EPA's proposed expansion of the requirement are described in detail in UARG's comments on that proposal.⁴⁷

On December 21, 2016, EPA Administrator Gina McCarthy signed a final rule that would impose many of the burdens to which UARG and others objected. The rule has not yet been published. Although that rule includes some extended deadlines, multiple promises to develop alternatives to the use of the ERT, and other improvements as a result of comments, the basic mandate of the rule is the same. If the rule becomes effective, numerous facilities will be required (at least in the short term) to electronically report significant volumes of information to EPA using the ERT, in addition to providing the same information in hard copy to any delegated state that does not waive the duplicate reporting requirement. The final rule also includes drafting errors that would inadvertently impose the new requirements on facilities EPA said it planned to exclude from the rule. If the rule is published, UARG intends to petition for administrative reconsideration.

The current NSPS electronic reporting requirements, and the planned expansion of those requirements to include many additional subparts, do not provide a "net benefit." EPA should formally withdraw the signed final rule and issue a new proposal to replace existing requirements for reporting using the ERT with a more workable electronic reporting system and to reduce the volume of information that must be reported electronically. For electric utilities, EPA should consider adapting its existing ECMPS software, which already is used by utilities to report information under the Acid Rain Program and CSAPR, to collect any additional information needed for those sources to demonstrate compliance with an applicable NSPS. As discussed further in Section IV.A above, EPA already is doing that for the MATS Rule at 40 C.F.R. Part 63, Subpart UUUUU.

Finally, EPA should act expeditiously—perhaps by direct final rule—to authorize use of electronic reporting (including email submission of electronic media) to EPA Regional Offices and to remove requirements for duplicate reporting to EPA Regions of information already electronically reported to EPA (e.g., to ECMPS or EPA's Central Data Exchange),

⁴⁶ 80 Fed. Reg. 15,100 (Mar. 20, 2015).

⁴⁷ See UARG Comments on Proposed NSPS Electronic Reporting Rule (June 18, 2015), EPA-HQ-OAR-2009-0174-0093.

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C. Reconsideration of the NSPS for Stationary Combustion Turbines, codified at 40 C.F.R. Part 60, Subpart KKKK

EPA promulgated the NSPS for new, modified, and reconstructed stationary combustion turbines in July 2006 as Subpart KKKK.⁴⁸ UARG filed a petition for administrative reconsideration of that rule raising several objections, including that (i) the rule's NOx standards were unachievable for large gas-fired turbines operating in simple cycle mode, (ii) the rule failed to provide a methodology to calculate compliance for operating periods when several different standards apply, and (iii) several other issues related to emissions monitoring.⁴⁹

EPA agreed to reconsider the Subpart KKKK rule and issued a proposed reconsideration rule in August 2012.⁵⁰ Instead of simply addressing UARG's reconsideration request, EPA proposed an almost complete rewrite of the rule, creating many new problems. At the same time, the proposal failed to actually address some of the specific issues UARG raised in its reconsideration petition. Further, EPA proposed to radically alter the analysis used to determine whether an existing combustion turbine had been "reconstructed," such that commonplace, insignificant work regularly performed at turbine facilities could subject those units to the stringent standards in Subpart KKKK. UARG submitted comments explaining its objections to the proposed changes to the reconstruction analysis and other problematic aspects of the proposal.⁵¹ EPA never finalized its proposed reconsideration rule.

EPA's proposed reconsideration rule has subjected combustion turbine owners to considerable regulatory uncertainty, making it difficult for them to anticipate the legal consequences of necessary maintenance activities or to predict what standards their turbines will ultimately need to comply with. UARG urges the Agency to address this uncertainty by issuing a supplemental proposal on reconsideration of Subpart KKKK that withdraws the 2012 proposal's changes to the reconstruction analysis and that addresses in full the issues in UARG's petition for reconsideration and its comments on the 2012 proposed rule.

⁴⁸ 71 Fed. Reg. 38,482 (July 6, 2006).

⁴⁹ See UARG Petition for Reconsideration of Subpart KKKK Rule (Sept. 7, 2006), EPA-HQ-OAR-2004-0490-0325.

⁵⁰ 77 Fed. Reg. 52,554 (Aug. 29, 2012).

⁵¹ See UARG Comments on Subpart KKKK Reconsideration Proposal (Dec. 28, 2012), EPA-HQ-OAR-2004-0490-0418.

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D. Reconsideration of the NSPS for Coal Preparation and Processing Plants, codified at 40 C.F.R. Part 60, Subpart Y

EPA promulgated revisions to the NSPS for coal preparation and processing plants in October 2009.⁵² UARG filed a limited petition for reconsideration of these Subpart Y revisions, noting that the rule was vague as to how one could determine whether an existing coal pile had been “modified” or “reconstructed” and thus become subject to Subpart Y.⁵³ Because coal piles are always in flux and their emissions are difficult to measure, it is unclear how EPA would determine whether an emissions rate increase occurs for the purposes of modification, or what components would be included in a reconstruction analysis. UARG also asked EPA to reconsider its imposition of the burdensome electronic reporting requirements discussed above in Section VI.B. EPA agreed to reconsider those issues but has never issued a proposed reconsideration rule.

EPA’s continued failure to address the treatment of existing coal piles under Subpart Y has created substantial regulatory uncertainty within the industry, making it difficult for them to predict how certain activities at their coal piles might trigger the requirements of Subpart Y. UARG urges the Agency to issue a proposed rule responding to UARG’s reconsideration petition that clarifies how existing coal piles will be treated under Subpart Y and adopts a more reasonable mechanism for electronic reporting..

E. Revisions to Test Method for Determining Stack Test Gas Velocity Taking Into Account Velocity Decay Near the Stack Walls

In 2009, EPA proposed revisions to Test Method 2H in 40 C.F.R. Part 60, Appendix A, that would reduce regulatory burdens associated with emissions testing.⁵⁴ The proposal would incorporate into Method 2H a procedure in Conditional Test Method 041 the use of which EPA was already routinely approving through source-by-source petitions. The proposal, which would make the method more accurate and require less testing, was universally supported and technically sound.⁵⁵ UARG asked EPA to move expeditiously to finalize the revisions in order to eliminate the need for source-by-source petitions. More than seven years later, the proposal has yet to be finalized. UARG urges EPA not to delay any further and finalize the revisions as proposed.

⁵² 74 Fed. Reg. 51,950 (Oct. 8, 2009).

⁵³ See UARG Petition for Reconsideration of Subpart Y Rule (Dec. 7, 2009).

⁵⁴ 74 Fed. Reg. 42,819 (Aug. 25, 2009).

⁵⁵ See, e.g. UARG Comments on Test Method 2H Revisions (Oct. 26, 2009), EPA-HQ-OAR-2008-0697.

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VII. National Ambient Air Quality Standards

A. “Findings of Substantial Inadequacy” of SIPs and “SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” published at 80 Fed. Reg. 33,840 (June 12, 2015)

In 2015, EPA Administrator Gina McCarthy in one action issued a group of “SIP Calls” mandating that 36 states revise their previously EPA-approved SIPs, because certain provisions of those SIPs addressing emissions from industrial sources during periods of startup, shutdown, or malfunction of applicable process or control equipment (“SSM”) are inconsistent with EPA’s most recent interpretations of certain CAA provisions. The SIP Calls are not based on any finding of air quality impacts or finding that removing the provisions is necessary to meet other CAA goals. Rather, they are based on the conclusion that there is a “facial inconsistency” of the called SIP provisions’ language with EPA’s recent interpretations of certain CAA provisions, and that inconsistency renders the previously EPA-approved SIPs “substantially inadequate.”

Under the CAA, states have primary responsibility for attaining, maintaining, and enforcing the NAAQS through their SIPs and EPA has only a secondary role that provides no authority to force states to adopt specific control measures. The SIP Calls are inconsistent with that system of cooperative federalism. The SIP Calls also are inconsistent with agencies’ inherent responsibility to consider costs and benefits when exercising discretionary authority. UARG is currently a petitioner challenging the SSM SIP Call in the U.S. Court of Appeals for the D.C. Circuit, and the opening briefs that Industry Petitioners (including UARG), State Petitioners, and Texas Petitioners filed are available in the docket for those consolidated cases.⁵⁶

The called SIP provisions are all designed to address the inability of sources to meet otherwise applicable emission control requirements under certain operating conditions, like SSM periods. All of the states subject to the SIP Calls have submitted (or, for revised NAAQS, will submit) demonstrations establishing that their SIP will result in attainment of the NAAQS. Many of the subject states already are achieving some or all of the NAAQS through their existing SIPs. On the other hand, the SIP Calls have imposed on states, and on EPA, the obligation to embark on a years-long and costly process of review and approval/disapproval of revised state rules and potentially development of Federal Implementation Plans. Imposition of such costs, in the absence of quantifiable benefits, also is contrary to the goals of Executive Order 13777.

⁵⁶ See *Walter Coke, Inc. v. EPA*, No. 15-1166 (D.C. Cir. Oct. 31, 2016), ECF Nos. 1643502, 1643571, 1643769.

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In short, the SIP Calls interfere with state discretion and impose significant costs and burdens without any corresponding finding of air quality-related benefit. EPA should convene a proceeding to withdraw the SSM SIP calls by applying a SIP call standard that is consistent with its limited authority under the CAA and obligation to consider the impacts of its exercise of that authority.

B. NAAQS Promulgation and Implementation

NAAQS and their implementation are at the heart of the CAA. EPA sets the NAAQS and must review them at least every five years, revising them as appropriate. Unfortunately, when the NAAQS for a particular pollutant are revised, previous NAAQS for that pollutant seem to linger forever in scattered sections of the Code of Federal Regulations. For example, NAAQS for fine particulate matter (“PM_{2.5}”) are found in sections 50.7, 50.13, and 50.18 of 40 C.F.R. Part 50. Such scattered codification of NAAQS is at best confusing and at worst misleading. UARG recommends revision of 40 C.F.R. Part 50 to remove NAAQS that have been replaced and to consolidate the current NAAQS for each regulated pollutant in a single section of the C.F.R.

UARG also urges the Agency to consider changes that would simplify the process that it uses to set and revise NAAQS. For example, the present process involves preparation by EPA’s career staff of a Policy Assessment. This document is not required by the Act. It could be eliminated, modified to reflect senior management input, or replaced by an Advance Notice of Proposed Rulemaking as was planned in 2006.⁵⁷ In addition, to the extent that risk assessment remains a part of the process, UARG urges that the assessment fully capture uncertainty about the estimated number and quality of effects. Preparation of an Integrated Uncertainty Analysis, as the National Academy of Sciences has recommended, would advance this effort.

Once NAAQS have been promulgated, rules established by EPA play a vital role in their implementation. UARG recommends revision of certain aspects of recently-promulgated NAAQS implementation rules, including EPA’s March 2015 rule establishing SIP requirements for the 2008 ozone NAAQS⁵⁸ and its August 2016 rule establishing SIP requirements for the 2012 PM_{2.5} NAAQS,⁵⁹ to eliminate unnecessary and duplicative requirements. Specifically,

⁵⁷ Memorandum from Marcus Peacock, Deputy Adm’r, EPA, to Dr. George Gray, Assistant Adm’r, Office of Research & Development, & William L. Wehrum, Acting Assistant Adm’r, Office of Air & Radiation (Apr. 17, 2007), https://www3.epa.gov/ttn/naaqs/pdfs/memo_process_for_reviewing_naaqs.pdf.

⁵⁸ 80 Fed. Reg. 12,264 (Mar. 6, 2015).

⁵⁹ 81 Fed. Reg. 58,010 (Aug. 24, 2016).

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UARG urges EPA to revoke the requirement for “anti-backsliding” measures for the 1997 ozone NAAQS,⁶⁰ which was replaced in 2008 by a more stringent standard for ozone.⁶¹ Section 172(e) of the CAA requires such measures only when a NAAQS is “relaxed.” In addition, UARG recommends that EPA revise its implementation rule for the 2012 PM_{2.5} NAAQS to revoke the less stringent 1997 standard throughout the nation, not just in areas designated attainment.⁶² Although UARG recognizes the need for continuity in the NAAQS program and therefore is not recommending that a superseded NAAQS be rendered null immediately upon promulgation of a revised one, UARG recommends that EPA revoke any superseded NAAQS a year after the effective date of area designations for the new or revised NAAQS. The revocation should be effective nationwide. States should not be required to complete an attainment demonstration (or equivalent) for the superseded NAAQS.⁶³

Finally, UARG urges EPA to return to its prior approach of relying on air quality monitoring to make initial designations for areas as attainment, nonattainment, or unclassifiable. The SO₂ NAAQS promulgated in 2010 was the first NAAQS for which the Agency chose to rely on modeling predictions—rather than monitoring data—for making initial designations. Modeling is not as accurate as monitoring. EPA’s preferred air quality models and required approaches to modeling are conservative by design to ensure that pollutant concentrations in ambient air are not underestimated. EPA acknowledges that its preferred AERMOD model cannot predict pollutant concentrations accurately at a given time and place. Furthermore, EPA continues to revise its AERMOD modeling system, leading to questions concerning the modeling on which designations will be based.⁶⁴

In addition to returning to its prior approach of relying on monitoring for initial designations in the future, EPA should revise nonattainment designations that have already been

⁶⁰ 40 C.F.R. § 51.1105.

⁶¹ Compare 40 C.F.R. § 50.10, with *id.* § 50.15.

⁶² See 81 Fed. Reg. at 58,142.

⁶³ See Comments by UARG and the American Petroleum Institute on Proposed PM NAAQS Implementation Rule at 61-64 (May 29, 2015), EPA-HQ-OAR-2013-0691-0096; see also UARG Comments on Proposed Implementation Rule for the 2015 Ozone NAAQS at 5-8 (Feb. 13, 2017), EPA-HQ-OAR-2016-0202-0105.

⁶⁴ See Memorandum from Richard A. Wayland, Div. Dir., Air Quality Assessment Div., EPA Office of Air Quality Planning & Standards, to Regional Air Dirs., Regions 1-10 (Mar. 8, 2017) (clarification of the version of the AERMOD modeling system to be used for designations in light of recent revisions of the model), https://www3.epa.gov/ttn/scrpm/guidance/clarification/SO2_DRR_Designation_Modeling_Clarification_Memo-03082017.pdf.

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made based on modeling. Several areas were designated nonattainment based on modeling in 2016,⁶⁵ and states have submitted modeling for several other areas for which designations are required by the end of 2017.⁶⁶ EPA should use its correction authority under section 110(k)(6) of the Act to replace modeling-based nonattainment designations made in 2016 with unclassifiable designations. Because of the overestimates inherent in modeled air quality, however, attainment designations based on modeling remain valid and should be retained. Furthermore, areas for which designations must be made at the end of 2017 that have not demonstrated attainment through modeling and that do not have adequate monitoring data should be designated unclassifiable; those with adequate monitoring data should be designated according to those data. EPA should also repeal its 2015 Data Requirements Rule for SO₂.⁶⁷ That rule places additional burdens on states either to perform modeling or to conduct additional air quality monitoring of SO₂ sources for designations. Although this rule requires the use of either modeling or monitoring, even the monitoring requirement exceeds what is required of states for other criteria air pollutants.⁶⁸

VIII. Air Quality Modeling Issues

On January 17, 2017, EPA promulgated revisions to its Guideline on Air Quality Models, codified at 40 C.F.R. Part 51, Appendix W (“Appendix W”).⁶⁹ This rule, which specifies models, inputs, and techniques for use in preparing SIPs and PSD permit applications, is not yet effective. Although UARG supports some aspects of the rule revisions, others are expected to make SIP preparation and obtaining permits for new or modified sources more time-consuming and costly. Specifically, UARG is concerned about new modeling requirements for sources seeking permits that emit precursors to ozone or PM_{2.5}. Many electric generators fall in this category. The screening tools that EPA suggests—Significant Impact Levels and Modeled Emission Rates for Precursors—are not particularly helpful in their present form.⁷⁰ The photochemical grid modeling mandated for sources not helped by these tools is time-consuming

⁶⁵ 81 Fed. Reg. 45,039 (July 12, 2016); 81 Fed. Reg. 89,870 (Dec. 13, 2016).

⁶⁶ See Fact Sheet: Final Data Requirements Rule for the 2010 1-Hour SO₂ Primary NAAQS (undated), https://www.epa.gov/sites/production/files/2017-02/documents/fact_sheet_-_final_data_requirements_rule.pdf.

⁶⁷ 80 Fed. Reg. 51,052 (Aug. 21, 2015).

⁶⁸ See UARG Comments on the Proposed Data Requirements Rule for the 1-Hour SO₂ NAAQS (July 14, 2014), EPA-HQ-OAR-2013-0711-0075.

⁶⁹ 82 Fed. Reg. 5182 (Jan. 17, 2017).

⁷⁰ UARG Comments on Draft Guidance on Development of MERPs (Mar. 31, 2017) (attached as Exhibit 2); UARG Comments on Draft Guidance on SILs for Ozone and Fine Particles (Sept. 30, 2016) (attached as Exhibit 3).

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and costly. EPA does not specify a particular model to be used, meaning the selected model must be approved on a case-by-case basis. Formal new requirements for written approval by EPA's (non-statutory) Model Clearinghouse whenever a model not specified in Appendix W is used are likely to further delay the process. Accordingly, the NAAQS Implementation Coalition, of which UARG is a member, filed a petition for reconsideration of these and other aspects of the Appendix W revisions.⁷¹

IX. Demonstration-of-Compliance Issues

A. Outreach on Current Rulemakings

Measures used to demonstrate compliance with emission standards and other requirements, while critical to the effectiveness of a rule, also can significantly increase the rule's cost, particularly if the rule is unclear or contains errors. EPA often initiates rulemakings with the goal of fixing such problems it has identified in rules, but does so without soliciting input from stakeholders on additional ways the rule could be improved. When UARG participates in such proceedings UARG often includes in comments suggestions for other revisions it believes would make the rule more cost effective without sacrificing environmental benefits. Unfortunately, these comments often are rejected as beyond the scope of the rulemaking because they suggest changes the Agency did not propose. To avoid this problem, before engaging in such rulemakings, EPA should solicit input from stakeholders either informally or formally on ways the rule could be made more cost-effective so that the Agency can address those suggestions in its development of the proposal and/or final rule. While some of these suggestions may not by themselves warrant initiating a rulemaking, once EPA decides to initiate a rulemaking it should make a greater effort to ensure that all potential improvements can be achieved.

For example, EPA already has on its regulatory agenda plans to revise the rules governing compliance demonstrations under the Acid Rain Program, and CSAPR at 40 C.F.R. Part 75. UARG believes there are many opportunities to relieve regulatory burdens under those rules by, for example, updating fuel sampling and analysis requirements to reflect current market and operating conditions and incorporating relief already provided for individual sources by petition. EPA should engage in outreach to affected sources prior to issuing its proposal to maximize the improvements to the rule.

⁷¹ Petition of the NAAQS Implementation Coalition for Reconsideration of Portions of the Final Rule on Revisions to the Guideline on Air Quality Models (Mar. 20, 2017), EPA-HQ-OAR-2015-0310-0181.

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B. The So-Called “Credible Evidence Rule”

In 1997, EPA promulgated revisions to 40 C.F.R. Parts 51, 52, 60, and 61 removing restrictions on the use of information other than the EPA or state-specified compliance method to establish violations of, or compliance with, emission limitations.⁷² Later, EPA revised its model rules for Federal Permit Operating Programs under Title V at 40 C.F.R. Parts 70 and 71 to require identification and consideration of information other than the specified compliance method when certifying compliance with permit terms and conditions.⁷³ These rules, which have so far avoided judicial review,⁷⁴ impose significant regulatory burdens and uncertainty on sources regarding the standard for compliance and responsible officials’ obligations when making certifications or compliance under penalty of perjury. They also are inconsistent with Congress’ limited authorization to use such information when assessing civil penalties only to determine the duration of a violation that already has been established using the specified compliance method. EPA should engage in rulemaking to repeal or revise these rules to limit the methods for establishing violations and determining compliance to those specified in rules and permits, and to limit use of other information to establishing the duration of a violation or compliance, consistent with Congress’ direction in CAA § 113(e).

* * * * *

UARG appreciates this opportunity to provide input on EPA regulations that may be appropriate for repeal, replacement, or modification. We look forward to the future opportunities for engagement mentioned in the *Federal Register* notice. Please feel free to contact me with any questions.

Sincerely,

/s/ Andrea B. Field
Andrea Field
*Counsel for the Utility Air
Regulatory Group*

⁷² 62 Fed. Reg. 8314 (Feb. 24, 1997).

⁷³ 62 Fed. Reg. 54,900, 54,946-47 (Oct. 22, 1997); 79 Fed. Reg. 43,661 (Jul. 28, 2014).

⁷⁴ Industry groups, including UARG, challenged both rules when they were promulgated, but the U.S. Court of Appeals for the D.C. Circuit refused to review their validity, finding instead that the challenges were not “ripe for review.” *Clean Air Implementation Project v. EPA*, 150 F.3d 1200 (D.C. Cir. 1998); *NRDC v. EPA*, 194 F.3d 130 (D.C. Cir. 1999).

EXHIBIT NN

Wehrum, Bill Calendar

Wehrum.Bill@epa.gov

Monday, November 13, 2017 – Wednesday, February 28, 2018

Time zone: (UTC-05:00) Eastern Time (US & Canada)

(Adjusted for Daylight Saving Time)

November 2017

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Busy

Tentative

Free

Out of Office

Working Elsewhere

Outside of Working Hours

November 2017

▲ Mon, Nov 13

Before 8:00 AM Free

8:00 AM – 3:30 PM Free

3:30 PM – 4:30 PM [FW: Call: Prep for California Meeting](#)

Dial-In: (202) [REDACTED] Leader Code: [REDACTED]

Participant Code: [REDACTED]

Delahoyde, Magdelana A. EOP/WHO

WJC-N 5400 + (b) (6) Participant Code: [REDACTED]

Wehrum, Bill

4:15 PM – 5:00 PM [Meet with Lignite Energy Council \(Confirmed\)](#)

WJC-N 5400

Wehrum, Bill

5:00 PM – 6:00 PM **Free**

After 6:00 PM Free

▲ **Thu, Dec 7**

Before 8:00 AM Free

8:00 AM – 8:30 AM Free

8:30 AM – 9:00 AM [Meet with the Ute Tribe \(Confirmed\)](#)

WJC-N 5400 + Mike Koerber by video

Wehrum, Bill

9:00 AM – 9:30 AM [Management Roundtable](#)

WJC-N 5400 + Dial: [REDACTED] Conference ID: [REDACTED]
[REDACTED] Participant Code: [REDACTED] (6)

Wehrum, Bill

9:30 AM – 10:00 AM [Motorpool from EPA WJC-N Courtyard to Auto Alliance Speech](#)

Black Chevy Volt, Tag# [REDACTED]

Wehrum, Bill

10:00 AM – 11:00 AM [Auto Alliance Board Speech \(Confirmed\)](#)

Auto Alliance office – 803 7th Street, NW Suite 300
(Office is located on the corner of 7th Street and H Street NW)

Wehrum, Bill

11:00 AM – 11:05 AM Free

11:05 AM – 11:30 AM [Motorpool from Auto Alliance Speech to EPA](#)

Black Chevy Volt, Tag# [REDACTED]

Wehrum, Bill

11:30 AM – 12:30 PM [OTAQ Fuels Weekly](#)

WJC-N 5400 + Video with AA + (b) (6)

Participant Code: [REDACTED]

Wehrum, Bill

12:30 PM – 1:00 PM [HOLD - Management Time](#)

1:00 PM – 1:15 PM Free

1:15 PM – 2:00 PM [Limetree Bay Terminals \(LBT\) Refinery, St. Croix, U.S. Virgin Islands](#)

WJC-N 5400 + Video with OAQPS + (b) (6)

Participant Code: [REDACTED]

Wehrum, Bill

2:00 PM – 2:30 PM [General with OGC/Ethics](#)

Bill's Office, WJC-N Room 5406A

Wehrum, Bill

- 2:30 PM – 3:00 PM [Motorpool from EPA WJC-N Courtyard to Hunton](#)
Black Chevy Volt, Tag# [REDACTED]
Wehrum, Bill
 - 3:00 PM – 4:00 PM [Speech at Hunton with American Electric Power, The Southern Company, Duke Energy, Dominion Energy, and the Utility Air Regulatory Group \(Confirmed\)](#)
Hunton & Williams Offices, 2200 Pennsylvania Avenue NW - 9th Floor
Wehrum, Bill
 - 4:00 PM – 4:05 PM **Free**
 - 4:05 PM – 4:30 PM [Motorpool from Hunton to EEOB](#)
Black Chevy Volt, Tag# [REDACTED]
Wehrum, Bill
 - 4:30 PM – 5:00 PM [WAVES submitted by Shanita](#)
 - 5:00 PM – 6:00 PM [NADA CAFE-GHG](#)
Cordell Hull, EEOB 208 (WAVES link and Call-in info located in Calendar notes)
Delahoyde, Magdelana A. EOP/WHO
 - After 6:00 PM** **Free**
-

▲ **Fri, Dec 8**

- All Day [Telework: Emily Atkinson](#)
- Before 8:00 AM** **Free**
- 8:00 AM – 9:45 AM** **Free**
- 9:45 AM – 10:15 AM [Briefing: OAR/OECA Update](#)
Administrator's Office
(b)(6) Fruit Cal.
- 10:15 AM – 10:20 AM** **Free**
- 10:20 AM – 10:30 AM [Motorpool from EPA Courtyard to 726 Jackson Place NW](#)
Black Chevy Volt, Tag# [REDACTED]
Wehrum, Bill
- 10:30 AM – 12:00 PM [WH Meeting - Climate Diplomacy PCC \(Confirmed\)](#)
White House Conference Center (WHCC), 726 Jackson Place, half a block North of the White House
Wehrum, Bill
- 12:00 PM – 12:05 PM** **Free**
- 12:05 PM – 12:30 PM [Motorpool from Jackson Place to EPA](#)
Black Chevy Volt, Tag# [REDACTED]
Wehrum, Bill
- 12:30 PM – 1:00 PM **(b)(5) DPP- Cancelled Meeting**
[REDACTED]
[REDACTED]
- 1:00 PM – 1:30 PM [Scheduling Meeting](#)
WJC-N 5400 + Dial: **(b)(6)** Conference ID:
[REDACTED] Participant Code: [REDACTED]