

From: [Gustafson, Adam](#)
To: [Fugh, Justina](#); [Griffo, Shannon](#)
Cc: [Payne, James \(Jim\)](#)
Subject: RE: Updated Recusal Statement for your review
Date: Wednesday, January 13, 2021 12:59:15 AM
Attachments: [Gustafson Impartiality Waiver.pdf](#)

Thank you, Justina. I would appreciate an impartiality determination. Presumably it can be based on your June 17, 2020 impartiality determination. The matter is a CEI petition for reconsideration of EPA's 2009 Greenhouse Gas Endangerment Finding—likely this one:
<https://cei.org/sites/default/files/CEI%20Petition%20for%20Rulemaking%20on%20Endangerment%202017%20corrected.pdf>

Adam Gustafson

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From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Tuesday, January 12, 2021 11:01 PM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>
Subject: RE: Updated Recusal Statement for your review

Hi Adam,

Shannon is out of the office this week so let me address your question. We used the word “case” but within the ethics context, we mean any specific party matter. An administrative petition for reconsideration is indeed a specific party matter. Assuming that you did not participate in the underlying matter prior to joining EPA, then you still have a covered relationship with CEI under the impartiality standards. In order to participate in this administrative petition for reconsideration, we will have to issue you a written impartiality determination.
Justina

Justina Fugh | Director Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North William Jefferson Clinton Federal Building | Washington DC 20460 (for ground deliveries use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Gustafson, Adam <Gustafson.Adam@epa.gov>
Sent: Tuesday, January 12, 2021 10:39 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: Updated Recusal Statement for your review

Shannon,

Under the ethics waiver I received, I'm allowed to participated in “any other potential cases arising at EPA where [my former client] CEI is a party and [I] did not previously participate personally and substantially while serving as an attorney for CEI or any other party.”

In this context, does “case” include an administrative petition for reconsideration? CEI petitioned EPA to reconsider a regulatory action, and I have been asked whether I can work on the Agency's response.

Here is what my updated recusal statement says:

On June 17, 2020, the White House granted me a limited waiver of the provisions of Section 1, Paragraph 6, for one of my former clients, the Competitive Enterprise Institute (CEI). This waiver permits me to participate in specific party matters in which CEI is a party, provided that I was not previously involved in that matter. To address my “covered relationship” with CEI under the federal impartiality standards, EPA’s Designated Agency Ethics Official issued me an impartiality determination on that same day. See attachments. I am now authorized to participate personally and substantially in *American Lung Association v. EPA*, No. 19-1140 (D.C. Cir.) and any other potential cases arising at EPA in which my former client, CEI, is a party, provided that I did not previously participate personally and substantially in that same matter for CEI or any other party. I may participate personally and substantially, including meetings or communications related to such cases even if CEI is present. But I understand that I must remain recused from any specific party matters in which my former client is a party if I participated personally and substantially previously.

I will send a separate request to schedule a one-on-one as you suggest. Maybe we can kill two birds with one stone.

Adam Gustafson

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From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Friday, June 19, 2020 1:28 PM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Payne, James <payne.james@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Updated Recusal Statement for your review

Hi Adam,

We’ve updated your recusal statement to reflect the issuance of your pledge waiver and impartiality determination, which would also be included as attachments to your revised recusal. Please take a look and let us know if you have any questions or comments.

Thanks,
Shannon

Shannon Griffo
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