

Kline, Scot

From: Kline, Scot
Sent: Monday, March 28, 2016 9:08 AM
To: 'Lemuel Srolovic'
Cc: Brian Mahanna; Michael Meade; Morgan, Wendy
Subject: RE: Climate Change Conference Common Interest Agreement
Attachments: Climate Change Conf. Common Interest Agreement.vt.edits.docx

Lem:

Thanks for the draft. We have an overall comment and two suggested language changes. First the latter. The suggested changes are redlined in the attached document. One is worth brief explanation: in paragraph 5 (iii), we have a couple of concerns: we don't think we can return documents of which we have taken possession under our state law unless ordered by a court to do so; and our office is okay with refusing to disclose covered documents if we can do so under our law, but we really avoid taking on an affirmative obligation to always litigate those issues.

The overall comment is whether we really need a common interest agreement for the conference, particularly given the short time left before the conference. We are concerned that this will distract people and take away time and focus from the conference itself. Our thought has been that anyone providing anything in writing at the conference should assume that it may get produced because of some state's public record laws. Matt and Peter should stick to what is in the public domain or be prepared to have those materials become public.

Our two cents.

Thanks.

Scot

From: Lemuel Srolovic [mailto:Lemuel.Srolovic@ag.ny.gov]
Sent: Friday, March 25, 2016 5:18 PM
To: Kline, Scot <scot.kline@vermont.gov>; Morgan, Wendy <wendy.morgan@vermont.gov>
Cc: Brian Mahanna <Brian.Mahanna@ag.ny.gov>; Michael Meade <Michael.Meade@ag.ny.gov>
Subject: Climate Change Conference Common Interest Agreement

Scot and Wendy – sorry for the delay but here's our proposed common interest agreement which is pared down from the VW template. We'd like to distribute to attending offices asap and ask them to sign.

Look ok to you?

Thanks,

Lem

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CLIMATE CHANGE CONFERENCE COMMON INTEREST AGREEMENT

This Common Interest Agreement (“Agreement”) is made and entered into by and between the undersigned Attorneys General of the States, Commonwealths, and Territories (the “Parties”) who are attending—along with their staff and certain outside advisors—a conference sponsored by the Office of the Attorneys General of New York and Vermont that will take place in the City of New York on Tuesday, March 29, 2016 (the “Conference”). The Parties mutually agree:

1. The Parties share common legal interests with respect to the following topics that are expected to will be discussed at the Conference (i) undertaking the defense of claims under federal law in *State of West Virginia, et al. v. United States Environmental Protection Agency*, No. 15-1363 (D.C. Cir.) and related proceedings, (ii) taking other legal actions to compel or defend federal measures to limit greenhouse gas emissions, (iii) conducting investigations of representations made by companies to investors, consumers and the public regarding fossil fuels, renewable energy and climate change, (iv) conducting investigations of potential illegal conduct to limit or delay the implementation and deployment of renewable energy technology, (v) taking legal action to obtain compliance with federal and state laws governing the construction and operation of fossil fuel and renewable energy infrastructure or (vi) contemplating undertaking one or more of these legal actions, including litigation (“Matters of Common Interest”).

2. It is in the Parties’ individual and common interests to share documents, mental impressions, strategies, and other information regarding the Matters of Common Interest and any related investigations and litigation at the Conference, and thereafter as they so choose (“Shared Information”).

3. Non-Waiver of Privileges: The exchange of Shared Information among Parties—including among Parties’ staff and outside advisors attending the Conference—does not diminish in any way the privileged and confidential nature of such information. The Parties retain all applicable privileges and claims to confidentiality, including the attorney client privilege, work product privilege, common interest privilege, law enforcement privilege, deliberative process privilege and exemptions from disclosure under any public records laws that may be asserted to protect against disclosure of Shared Information to non-Parties (hereinafter collectively referred to as “Privileges”).

4. Nondisclosure. Shared Information shall only be disclosed to: (i) Parties; (ii) employees or agents of the Parties, including experts or expert witnesses; (iii) government officials involved with the enforcement of antitrust, environmental, or consumer protection laws who have agreed in writing to abide by the confidentiality restrictions of this Agreement; (iv) criminal enforcement authorities; (v) other persons, provided that all Parties consent in advance; and (vi) other persons as provided in paragraph 6. Nothing in this Agreement prevents a Party from using the Shared Information for law enforcement purposes, criminal or civil, including presentation at pre-trial and trial-related proceedings, to the extent that such presentation does not (i) conflict with other agreements that the Party has entered into, (ii) interfere with the preservation of the Privileges, or (iii) conflict with court orders and applicable law.

5. Notice of Potential Disclosure. If any Shared Information is subject to any form of compulsory process in any proceeding or is demanded under a public records law (“Request”),

the Party receiving the Request shall: (i) immediately notify all other Parties (or their designees) in writing; (ii) cooperate with any Party responding to the Request; and (iii) ~~if requested return and/or refuse to disclose any Shared Information unless otherwise required by law, administrative order, or court order.~~

6. Inadvertent Disclosure. If a Party discloses Shared Information to a person not entitled to receive such information under this Agreement, the disclosure shall be deemed to be inadvertent and unintentional and shall not be construed as a waiver of any Party's right under law or this Agreement. Any Party may seek additional relief as may be authorized by law.

7. Related Litigation. The Parties continue to be bound by this Agreement in any litigation or other proceeding that arises out of the Matters of Common Interest.

8. Parties to the Agreement. This Agreement may be executed in counterparts. All potential Parties must sign for their participation to become effective.

9. Withdrawal. A Party may withdraw from this Agreement upon thirty (30) days written notice to all other Parties. Withdrawal shall not terminate, or relieve the withdrawing Party of any obligation under this Agreement regarding Shared Information received by the withdrawing Party before the effective date of the withdrawal.

10. Modification. This writing is the complete Agreement between the parties, and any modifications must be approved in writing by all Parties.

Signature: _____ Date: _____

[Name]
[Title]
[Office]
[Phone]
[Email]