

## Kline, Scot

---

**From:** Peter Washburn <Peter.Washburn@ag.ny.gov>  
**Sent:** Friday, March 25, 2016 11:49 AM  
**To:** Lemuel Srolovic; Kline, Scot; Morgan, Wendy  
**Cc:** Michael Meade  
**Subject:** Afternoon Discussion: State Responses  
**Attachments:** Question Responses.docx

Wendy, Scot, Lem –

For this afternoon's discussion. See attached responses received from participating states re: what they are looking to add to/get out of the afternoon discussion.

As an overall summary, the responses demonstrate a strong desire among the states to learn what each other are up to -- a validation of the value of this meeting – as well as to support and sustain coordination on individual and collective efforts into the future – a validation of the value of a coalition.

**IMPORTANT NOTICE:** This e-mail, including any attachments, may be confidential, privileged or otherwise legally protected. It is intended only for the addressee. If you received this e-mail in error or from someone who was not authorized to send it to you, do not disseminate, copy or otherwise use this e-mail or its attachments. Please notify the sender immediately by reply e-mail and delete the e-mail from your system.

## **Attorneys General Climate Change Coalition**

### **Questionnaire Responses**

**(1) What do you hope to get or learn during the afternoon? We want to make sure we cover what we can of your particular interests.**

CT (Matthew Levine) – I hope to learn more about the substance of the disclosure investigation and the legal theories to support taking any action. It would also be helpful to understand the magnitude of such an action and the resources available to undertake it.

DC (Elizabeth Wilkins) – I am interested in hearing generally what other states are doing on climate change-related efforts and, in particular, in how they've staffed these efforts if they do not have a section dedicated to environmental issues.

IL (James Gignac) – Nothing more specific than what the agenda items are designed to draw out (discussion of coordination, possible new initiatives, etc.).

MA (Melissa Hoffer) – We'd like to learn the status of other states' investigations/plans and potential avenues for information sharing and coordination.

ME (Jerry Reid) – I am interested in learning more about potentially unfair and deceptive trade practices of Exxon as they relate to global warming, and the level of interest among our states in pursuing these claims.

OR (Paul Garrahan) – We look forward to learning about NY's oil company investigation, primarily. And to hear any other ideas you and other states may have. And to build our working relationship.

RI (Greg Schultz) – I am most interested in personally meeting the various state AAGs that I have worked with since 2009 on Clean Air Act and Climate Change issues. I would also be interested in looking ahead to our challenges for this year and beyond, such as possible other EPA-related actions and rulemaking, etc.

USVI (Claude Earl Walker) – We are eager to hear what other attorneys general are doing and find concrete ways to work together on litigation to increase our leverage.

VA (Daniel Rhodes) – We are mostly interested in hearing about efforts ongoing in the other jurisdictions present and how Virginia may complement those efforts and move forward here.

WA (Laura Watson) – We are interested in the discussion about utility efforts to barrier renewables. I am told that this has not been a problem in our state, or at least not a problem that we currently have the tools to address. I am interested in hearing what types of issues other states are seeing and what tools they are using to address those.



We are also interested in finding out whether other states are taking action on ocean acidification or whether this is largely a West Coast issue at this point.

We are also wondering whether other states are looking at the insurance side of things. Are states running into issues with insurance companies limiting coverage for climate-related claims?

**(2) Please provide a very brief description of the office activities you will describe at the 1:45 segment of the agenda. We'd like to group related activities together. You will have 2-3 minutes to describe your activities.**

CT (Matthew Levine) – I can briefly describe the various legal actions that Connecticut has participated in (many of which we have joined with New York and the extended coalition of States). I can also discuss Connecticut's extensive efforts to combat climate change through actions by our agency and shifting to renewable sources of energy. We have been successful in defending several legal challenges to the State's commitment to increase renewables sources of energy.

DC (Elizabeth Wilkins) – DC has not previously taken many affirmative steps to combat climate change. To the degree that we have had any involvement, it has been because we represent our Department of Energy and Environment in front of our Public Service Commission on matters related to creating incentives for more widespread use of sustainable energy.

IL (James Gignac) – Climate and energy-related activities of the Illinois Attorney General's Office include:

- Participation in federal multi-state cases involving air quality and carbon emissions;
- Enforcement actions and state regulatory matters involving coal-burning power plant emissions and coal ash;
- FERC and MISO issues involving capacity payments to coal plants;
- Financial challenges of coal industry (both mining and power sectors);
- Involvement in state level policy and regulations on energy efficiency, renewables, and utility business models

MA (Melissa Hoffer) – Advancing clean energy and making smart energy infrastructure investments (addresses our positions on new gas pipelines, LTKs for cleaner energy); promoting utility customer choice (solar incentives, grid mod); readiness and resilience (storm response, grid mod).

ME (Jerry Reid) – Maine has long participated with New York, Massachusetts and other like-minded states in litigation to bring about meaningful federal regulation of greenhouse gas emissions. Today this is primarily in the form of litigation supporting EPA in challenges to the Clean Power Plan.



OR (Paul Garrahan) – I assume this item is asking what work out offices are doing on climate change issues? Other than our CAA litigation with other states, we are also defending Oregon's Clean Fuels Program (low carbon fuel standards) at the 9th Circuit (after successfully getting the challenge dismissed by the district court) and at the Oregon Court of Appeals (rule making challenge). We also continue to defend the state in a public trust doctrine case asserting that the state has not taken sufficient steps to cut GHG emissions. That case is also currently at the Oregon Court of Appeals (for a second time).

RI (Greg Schultz) – I'm not sure exactly what you are looking for here. Perhaps I could discuss the challenges of working in a small state with limited environmental staff. For instance, as part of a 3-person Environmental and Land Use Unit within the RIAG's office, I prosecute a wide variety of civil environmental enforcement actions in state court; defend state agencies on environmental and related matters; litigate state's rights in land, including public rights-of-way, beaches and parks; counsel state agencies on environmental matters, including rulemaking; represent the State in multi-state environmental litigation, etc.

USVI (Claude Earl Walker) – We just finished litigation against Hess Oil over an enforcement matter relating to Hess's decision to close its oil refinery in St. Croix, Virgin Islands, after receiving billions of dollars in tax breaks. As part of our \$800 million settlement, we were able to create an environmental response trust that will deal with clean-up of the site and help convert part of it to solar development, we hope. We also have issued a subpoena to ExxonMobil and are preparing third party subpoenas on the common issue of its potential misrepresentations regarding its knowledge of climate change.

VA (Daniel Rhodes) – No response.

WA (Laura Watson) – As you know, Washington State is one of the parties to the multi-state litigation defending the Clean Power Plan. We have also intervened in a lawsuit in defense of Oregon's low carbon fuel standard. We are looking at possible causes of action based on fossil fuel company disclosures and have just started looking at possible common law causes of action (e.g., nuisance suits). Other than that, the bulk of our climate work consists of providing legal support to our clients in the Governor's Office and the Department of Ecology. Specifically, we are supporting a regulatory effort to cap carbon emissions from transportation fuels, natural gas, and stationary sources. We are also providing legal support related to the development of environmental impact statements for two large coal export facilities proposed in Washington and three proposed oil terminals.

**(3) Specific items you would like to discuss in the discussion of expanding the coalition's work beyond the federal/EPA advocacy and litigation.**

CT (Matthew Levine) – None.



DC (Elizabeth Wilkins) – Nothing to add – DC will most likely be primarily in listening mode as this work is new for us.

IL (James Gignac) – Consider how to increase our office's coordination on matters involving DOE, FERC, and ISOs/RTOs. How we can better link the consumer and environmental interests of our offices in these venues? Similarly, regarding state energy and climate policies, can we strengthen or bolster our office's sharing of knowledge, materials, experts, etc. on things like energy efficiency, renewable portfolio standards, demand response, net metering, and utility rate design? Finally, I would be interested in talking with any other states (time permitting) dealing with coal mine or power plant closures and issues of jobs, property taxes, decommissioning or clean-up, and site re-use.

MA (Melissa Hoffer) – See above.

ME (Jerry Reid) – None.

OR (Paul Garrahan) – We don't have any particular ideas, other than our interest in the possible oil company litigation, but we are open to other possibilities.

RI (Greg Schultz) – I am open for any discussion. I would like to hear from the NHAG and other states on their MTBE litigation.

USVI (Claude Earl Walker) – We are interested in identifying other potential litigation targets.

VA (Daniel Rhodes) – Not sure we have specific items for the afternoon discussion at this time but likely will be prompted by the discussions. We would be very interested in any discussion and thoughts about resource sharing through collaborative thinking in the formation of coalition building.

WA (Laura Watson) – I think I probably covered this in response to the first question. The only thing I'd add is that we're interested in the legal theories under section 115 of the federal Clean Air Act, although it looks like the focus in the agenda is on non-federal actions.

**(4) Will any consumer protection or securities staff be participating? Fossil fuel company disclosure investigations raise consumer protection and securities issues as well as climate change. If enough folks from that part of your offices are participating, we could plan a break out session for them.**

CT (Matthew Levine) – We will not have someone from our Consumer protection division but I work closely with that group and am getting familiar with the consumer protection and securities issues related to climate change and we would likely be the group (environment) that works on these issues.

DC (Elizabeth Wilkins) – I will be the only person from DC participating.

IL (James Gignac) – Not in the meeting itself, but we do have consumer protection staff interested in learning more about the issues. We do not have securities staff.

MA (Melissa Hoffer) – No.

ME (Jerry Reid) – No.

OR (Paul Garrahan) – Yes, Sr AAG Tim Nord will attend from our consumer protection unit.

RI (Greg Schultz) – No.

USVI (Claude Earl Walker) – Yes, we will have our outside counsel/Special Assistant Attorney General, who has specialized in consumer protection work.

VA (Daniel Rhodes) – No response.

WA (Laura Watson) – Our CP folks will not be attending but I have been in contact with them and intend to report back to them after the meeting. I've reviewed our office's internal analysis on the various causes of action available in Washington State and can contribute at least generally to the discussion.

**(5) Any other thoughts about the afternoon's working session?**

CT (Matthew Levine) – None.

DC (Elizabeth Wilkins) – None.

IL (James Gignac) – None.

MA (Melissa Hoffer) – None.

ME (Jerry Reid) – None.

OR (Paul Garrahan) – We look forward to the discussion.

RI (Greg Schultz) – I would be interested in discussing the possibility of setting up additional AG meetings with NESCAUM (Northeast States for Coordinated Air Use Management) on regional air issues (NESCAUM works closely with state air agencies on a variety of air issues). I work closely with my state air agency, but never seem to sit down with them to discuss their specific issues and concerns.

USVI (Claude Earl Walker) – None.

VA (Daniel Rhodes) – None.

WA (Laura Watson) - None.