ENVIRONMENTAL RULES REVIEW COMMITTEE
AGENDA
Thursday, November 14, 2019, 1:00 – 3:30 p.m.

Michigan Department of Environment, Great Lakes, and Energy
Constitution Hall, Lee Walker Conference Room, Atrium Level North
525 West Allegan Street, Lansing, Michigan 48933

ERRC COMMITTEE MEMBERS:

Attending:

Janet Barlow	Daniel Frakes	Jeremy Orr
Shayna Schupan Barry	Dave Maness	Eric Pessell
Tyler Ernst	Fadi Mourad	Helen Taylor
Mark Fowler (Vice Chair)	Robert Nederhood (Chair)	Grant Trigger

Non-Voting Members:

James Clift, EGLE	Kirk Lapham, DNR
Jim Johnson, MDARD	Deb MacKenzie-Taylor, DHHS

Clerk:
Candra Wilcox

1. ERRC Roll Call
   Candra Wilcox, Clerk

2. Approval of Agenda
   Robert Nederhood, ERRC Chair

3. Approval of ERRC Minutes from October 31, 2019, Meeting
   Robert Nederhood, ERRC Chair

4. Rulemaking Process Refresher
   Dave Fiedler, EGLE

5. Discussion of the changes to the Regulatory Impact Statement for the Draft Supplying Water to the Public (PFAS) Rules (2019-35 EG)
   Drinking Water and Environmental Health Division Staff

6. Public Comment

7. Deliberation on Draft Rules (2019-35 EG)
   ERRC Members

8. ERRC Vote on the Draft Rules (2019-35 EG)
   ERRC Members

9. Meeting Schedule for the Remainder of 2019 and 2020
   ERRC Members

10. Adjournment

Next Scheduled Meetings
November 21, 2019
December 19, 2019

ENVIRONMENTAL RULES REVIEW COMMITTEE
MINUTES
Thursday, October 31, 2019, 1:00 – 3:30 p.m.

Michigan Department of Environment, Great Lakes, and Energy
Constitution Hall, Lee Walker Conference Room, Atrium Level North
525 West Allegan Street, Lansing, Michigan 48933

COMMITTEE MEMBERS:

Voting Members Present:

Janet Barlow	Daniel Frakes	Jeremy Orr
Shayna Schupan Barry	Dave Maness	Eric Pessell
Tyler Ernst	Fadi Mourad	Helen Taylor
Mark Fowler (Vice Chair)	Robert Nederhood (Chair)	Grant Trigger

Voting Members Absent:
None

Non-Voting Members:

James Clift, EGLE	Kirk Lapham, DNR	Kevin Besey, MDARD
Deb MacKenzie-Taylor, DHHS		

Clerk:
Candra Wilcox

1. Welcome and Introduction of New Members

Robert Nederhood, Chair, called the meeting to order at 1:01 p.m., and introduced new members, Shayna Schupan Barry and Daniel Frakes.

2. ERRC Roll Call

Candra Wilcox, clerk, provided roll call. Robert Nederhood, Chair, noted that a quorum was present.

3. Approval of Agenda

Motion: Tyler Ernst made a motion to approve the agendas as provided; Dave Manness seconded the motion. The motion was approved by all members present.

4. Approval of ERRC Minutes from June 27, 2019, Meeting

Grant Trigger requested that the minutes be amended for the presentation on the Recommended Health-Based Values for PFAS in Drinking Water to read: “Motion: Dan Eichinger moved **that MPART** accept the health-based value recommendations. The motion passed with all ayes.”

Motion: Eric Pessel made a motion to approve the minutes as provided; Fadi Mourad seconded the motion. The motion was approved by all members present.

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5. Presentation on the Draft Supplying Water to the Public (PFAS) Rules (2019-35 EG)

George Krisztian and Kris Philip, Drinking Water and Environmental Health Division, provided an overview of the draft rule process.

6. Public Comment

Charlotte Jamison, Michigan Environmental Council, strongly urged the ERRC to move forward with the rules and not delay any further. EGLE conducted a very thorough stakeholder process and stakeholders were given ample time to weigh in on the rules. There are members that have a direct financial conflict of interest for this rule package, and Charlotte asked them to disclose and recuse themselves.

David Winn, Oscoda Need our Water Group, stated that the Wurtsmith Air Force Base has delayed efforts to remediate the PFAS in their community. In the past year, there has been PFAS foam on the lakes and the deer and fish population have been affected. The Air Force Base does not know what they are going to do and it may be years before they have a remediation plan. David urged the ERRC not to delay in approving the MCL so that people affected by contamination can get things taken care of immediately.

Stephen Brown, Sierra Club, has a PhD in Chemistry and is a resident of Ann Arbor, where there is contamination in the Huron River. Dr. Brown urged the ERRC to approve the draft rules without further delay. Chemical manufacturing has been exposing the public to these compounds for many years. The rules are reasonable to protect the public health. The rules are consistent with rules being considered by other states.

Laura Campbell, Michigan Farm Bureau, stated that there is a disproportionate effect of cost to the smaller water supplies, such as farms. They do not have an option to pass the cost increase on to rate payers. Cleanup standards have to be taken into account when having standards for enforcement for MCLs.

Herasanna Richards, Michigan Municipal League (MML), stated that the MML has been involved in the process since the spring. Over the past ten months, the members have worked with the Science Advisory Workgroup, the ERRC, and EGLE to better understand and address PFAS contamination. Providing clean, affordable drinking water is a priority. As the ERRC considers adopting these rules, there are communities still navigating the cost. As we move forward continue to have these conversations.

Jaime Fleming, American Water Works Association (AWWA), stated that she attended both listening sessions. Everyone in the room was approaching the rules from the perspective of what is in the best interest of public health. The proposed rules are straightforward and are consistent with the framework of other rules. The cost of additional monitoring and implementing treatment is not insignificant. The availability of funding sources must be an ongoing discussion.

Mara Herman, Ecology Center, stated that the ERRC should move forward with the rulemaking process as it’s best for public health.

7. Deliberation on Draft Rules (2019-35 EG)

The ERRC members asked additional questions of EGLE staff and deliberated on the draft rules. The ERRC members will forward questions on the Regulatory Impact Statement (RIS) to Dave Fiedler who will compile them and forward to the appropriate EGLE staff.

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8. ERRC Vote on the Draft Rules (2019-35 EG)

Motion: Grant Trigger moved to table the vote to the next scheduled meeting; Daniel Frakes seconded the motion. The motion was approved by all members present.

Motion: Grant Trigger moved to schedule a special meeting on November 14 to review the supplemental comments on the Regulatory Impact Statement; Tyler Ernst seconded the motion. The motion was approved by all members present.

9. Instructions for Using State Issued Email Addresses

Candra Wilcox, EGLE, provided state of Michigan email accounts to the ERRC members. The new state of Michigan email accounts should be used for all ERRC business.

10. Adjournment

Motion: Helen Taylor made a motion to adjourn the meeting at 3:44 p.m.; Jeremy Orr seconded the motion. The motion was approved by all members present.

DRAFT

STATE OF MICHIGAN

DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY

LANSING

GRETCHEN WHITMER
GOVERNOR

LIESL EICHLER CLARK
DIRECTOR

VIA E-MAIL

TO: Rob Nederhood, Chairman, Environmental Rules Review Committee

FROM: David Fiedler, Regulatory Affairs Officer

DATE: November 13, 2019

SUBJECT: Updated EGLE Response to Questions Posed by the Environmental Rules Review Committee (ERRC) Regarding the Proposed Supplying Water to the Public Rules

The Department of Environment, Great Lakes, and Energy (EGLE) offers the following responses to questions posed by the ERRC following the ERRC's October 31, 2019, meeting. Where appropriate, EGLE has also revised the Regulatory Impact Statement and Cost-Benefit Analysis (RIS) in response to some of these comments to provide additional clarity. The revised RIS is attached for the ERRC's review.

1. *Question 10 of the RIS asks the department about their costs to oversee the rule. My question to the department at the meeting was; are there any other regulatory agencies responsible for enforcement of this rule? Their answer was affirmative, the Local Health Departments are authorized to provide regulatory oversite of the rule too and they would also have increased costs due to the rule being implemented. So, my request is for the RIS to accurately reflect this cost to Local Health Departments as well.*

EGLE Response:

The following was added to Question 10 of the RIS. Local health departments directly oversee approximately half of these supplies which will result in increased oversight responsibilities and costs primarily in processing sampling results and issuing enforcement communications. The bulk of the cost of the response, approving and overseeing corrective action will be borne by EGLE as EGLE approves construction permits for treatment systems. It is important to note that the increase in oversight is mitigated by the fact that the new rules require sampling, analysis and compliance calculation in exactly the same way

as existing rules resulting in a lower "learning curve" for local health departments in administering the new rules.

2. *In the response to Question 13, the cost for installation of treatment technology is based on New Hampshire's 2019 report and is stated as a cost per gallon. Since the 22 systems that have been identified to date as having levels of contamination in excess of the proposed maximum contaminant levels (MCLs) are all fairly low-volume systems, would New Hampshire's model accurately reflect the cost to these systems? Is there a threshold minimum cost for installation of a GAC system regardless of how small a supply system is?*

3. *In the responses to Questions 16, 19, and 20, the Department states that rural areas and small businesses will be impacted less than urban areas and large municipalities since most contamination found to date occurs in larger systems and since small water supplies have to treat a lower volume of water. Although this makes sense in theory, the 22 systems identified thus far (and mentioned earlier in the cost analysis section) are all lower-volume systems (including schools, trailer parks, small businesses, and a couple small community supplies) that are mostly in more rural areas of the state. Please provide additional information indicating what percentage of the estimated $6.4 million/yr. testing costs, $7.4 million treatment installation costs, and $326K O&M costs are likely to be borne by these and other rural supplies and small businesses.*

EGLE Response to Questions 2 and 3:

The following was updated in Question 13 of the RIS. The cost estimates below apply to all impacted water supplies, both private and public. In general, non-transient noncommunity water systems tend to be smaller while community water systems tend to be larger.

After several rounds of testing affected water supplies, we have identified 22 water systems that may likely be impacted by a requirement to install treatment due to an exceedance of the proposed MCLs. These 22 systems consist of both small systems and larger systems. Because smaller systems often pay a higher cost per gallon due to their size, we have estimated the cost separately for the larger community waster systems and the smaller non-community systems.

The larger, community systems are treating a total of 0.928 million gallons per day (MGD). To estimate the costs for these systems we were able to use a January 2019 report from the State of New Hampshire. New Hampshire identified a one-time treatment installation cost based on gallons treated per day. Their lowest cost estimate was $2.90 per gallon, and their highest cost estimate was $8.10 per gallon. To be conservative in our estimate, we have used the

higher end of this range at $8 per gallon treated per day. Based on this value, the estimated one-time installation cost of the new rules for the larger, community systems will be $7.4 million ($8 x 928,000).

The smaller, non-community systems treat a total of 79 thousand gallons per day. A recent cost estimate for Robinson Elementary school was $206,000 to treat a designed load of 4,500 gallons of water per day ($46 per gallon treated per day). Projecting this value forward, to install treatment for 79,000 gallons of water it is estimated that it will cost $3.6 million.

Combining the estimated cost for treatment installation at the larger, community systems with the estimated cost for the smaller, non-community systems, the total estimated cost for all water systems where we currently know PFAS needs to be addressed is an estimated total of $11 million.

4. *If the proposed rules take effect, please clarify which of the MCLs for the seven identified PFAS compounds will automatically become clean-up standards under Part 201?*

5. *What is the expected impact on the biosolids land application program when these criteria become the new Part 201 groundwater criteria?*

EGLE Response to Questions 4 and 5:

The following was updated in Question 3.A. There are surface water standards and groundwater cleanup standards. The groundwater cleanup standards for PFOA and PFOS will be changed as a result of the rule to match the final values adopted for those chemicals. The state may move forward for groundwater standards for PFNA, PFHxS, PFBS, PFHxA and HFPO-DA following the process set forth in MCL 324.20120a. However, adoption of the proposed rules does not alter that process. Any new groundwater standards will be factored into future decisions regarding the biosolids application program. Surface water standards will remain the same. There are no other laws concerning PFAS standards in drinking water.

6. *I would like to pose a question to EGLE on rules ability to adapt to the evolving science of the MCL's. It has been acknowledged that science around these new MCL's will continuing to emerge. As more research and findings become available is there any language that would address this in the rule? For example, a requirement in the rule or anywhere else for an annual review and corresponding MCL adjustments by MPART or EGLE?*

EGLE Response:

The current rule was developed in less than a year after it became clear that the EPA heath protection levels did not appear to be protective enough. If scientific research indicates EGLE needs to develop standards for other PFAS chemicals or require an adjustment to existing standards there is no reason to believe that the same process could not be used again to quickly revise standards based on the new data.

7. *Further to Question 3 above since these systems are likely to be more remote will they even have a practical alternative of connecting to another clean public water supply as was suggested during our discussion? With respect to the agricultural community, Do the impacted members have practical alternatives? What plans are in place to mitigate the cost burden to these stakeholders?*

EGLE Response:

The standard will not vary depending on size of system or whether the system is rural or urban. All Michigan residents connected to a public water system should be able to count on the system providing them with safe, reliable water. Some systems could obviously be more complicated to address than others. EGLE will work with those systems to identify and implement appropriate actions.

8. *Further to Question 4 above please explain why the surface water quality standards would not be changed by EGLE using the Rule 57 process as a consequence of the adoption of the MCL?*

EGLE Response:

Establishing MCLs do not necessitate EGLE to change surface water quality standards. If EGLE decides at a later date that the PFAS water quality standards need to be adjusted as a result of more current data or science, that decision will be made irrespective for the MCLs.

9. *Further – what is the estimated impact on small business, any state agencies (such as MDOT or Agriculture) or any municipalities in Michigan or any other category of stakeholder when the PFOA and PFOS criteria are changed under Part 201?*

EGLE Response:

If an entity is responsible for either causing a PFAS release or being responsible for the due diligence associated with a PFOS or PFOA release under Part 201,

then they would be obligated to meet these standards. This impact will vary depending on the PFOS or PFOA concentration, media effected, and extent of contamination. Because of this variability, it is not practical to determine the impact of this change. Even if it was, this impact is a result of current statutory applicability not a regulatory requirement.

10. *What level of discussion occurred during the stakeholder process on the impact these rules would have on the Part 201 program and related criteria – were all stakeholders advised of this consequence? What is the cost and impact of the proposed rules on cleanups in Michigan? How many properties in the State will be deemed contaminated "facilities" due to the rule? How many of those properties are residential? How many previously remediated or "closed" facilities will be reopened for possible additional investigation and remediation? What cost to small business will occur?*

EGLE Response:

Yes, this issue was discussed with the stakeholder groups during the regulation development process. If an entity is responsible for either causing a PFAS release or being responsible for the due diligence associated with a PFOS or PFOA release under Part 201, then they would be obligated to meet these standards. This impact will vary depending on the PFOS or PFOA concentration, media effected, and extent of contamination. Because of this variability, it is not practical to determine the impact of this change. Even if it was, this impact is a result of current statutory applicability not a regulatory requirement.

11. *Please identify and describe in the RIS the provisions of the DW rules and statute that outline how EGLE will administer the administrative consent order (ACO) process mentioned in Question 8, to ensure "an approach that balances the need to protect public health with the fiscal and technical realities the supply is facing."*

EGLE Response:

The Department routinely enters into ACOs with facilities and systems that are in violation of environmental standards. These joint agreements are negotiated to clarify expectations, set reasonable compliance schedules, and permit systems to continue to operate while correcting environmental challenges in a timely and appropriate manner.

EGLE appreciates the ERRC's interest in these important rules that, when in effect, will provide critical protections to Michigan's citizens who are struggling with exposure to PFAS in their drinking water. EGLE looks forward to the ERRC's action on the proposed rules at the meeting scheduled for November 14, 2019.

Attachment

cc/att: Aaron B. Keatley, Chief Deputy Director, EGLE
Amy Epkey, Senior Deputy Director, EGLE
Eric Oswald, EGLE

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
LANSING

GRETCHEN WHITMER
GOVERNOR

LIESL EICHLER CLARK
DIRECTOR

VIA E-MAIL

TO: Rob Nederhood, Chairman, Environmental Rules Review Committee

FROM: David Fiedler, Regulatory Affairs Officer

DATE: November 12, 2019

SUBJECT: EGLE Response to Questions Posed by the Environmental Rules Review Committee (ERRC) Regarding the Proposed Supplying Water to the Public Rules

The Department of Environment, Great Lakes, and Energy (EGLE) offers the following responses to questions posed by the ERRC following the ERRC's October 31, 2019, meeting. Where appropriate, EGLE has also revised the Regulatory Impact Statement and Cost-Benefit Analysis (RIS) in response to these comments to provide additional clarity. The revised RIS is attached for the ERRC's review.

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EGLE Response:

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as existing rules resulting in a lower "learning curve" for local health departments in administering the new rules.

2. *In the response to Question 13, the cost for installation of treatment technology is based on New Hampshire's 2019 report and is stated as a cost per gallon. Since the 22 systems that have been identified to date as having levels of contamination in excess of the proposed MCLs are all fairly low-volume systems, would New Hampshire's model accurately reflect the cost to these systems? Is there a threshold minimum cost for installation of a GAC system regardless of how small a supply system is?*

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EGLE Response:

The current rule was developed in less than a year after it became clear that the EPA heath protection levels did not appear to be protective enough. If scientific research indicates EGLE needs to develop standards for other PFAS chemicals or require an adjustment to existing standards there is no reason to believe that the same process could not be used again to quickly revise standards based on the new data.

EGLE appreciates the ERRC's interest in these important rules that, when in effect, will provide critical protections to Michigan's citizens who are struggling with exposure to PFAS in their drinking water. EGLE looks forward to the ERRC's action on the proposed rules at the meeting scheduled for November 14, 2019.

Attachment

cc/att: Aaron B. Keatley, Chief Deputy Director, EGLE
Amy Epkey, Senior Deputy Director, EGLE
Eric Oswald, EGLE

November 11, 2019

Michigan Environmental Rules Review Committee
Constitution Hall
525 West Allegan Street
Lansing, Michigan

RE: Conflict of Interest with Rule Set 2019-035 EG, Supplying Water to the Public (PFAS MCL)

Dear Michigan Environmental Rules Review Committee Members:

In 2018 the Michigan Legislature enacted and then Governor Snyder signed a bill to establish the Michigan Environmental Rules Review Committee (ERRC). The ERRC was tasked with reviewing all environmental rules packages that are undertaken by the Department of Environment, Great Lakes, and Energy (EGLE). It is staffed by people representing various special interests across the state including local governments, manufacturing and agriculture, as well as environmental and conservation groups.

As with any decision-making body, it is of utmost importance that there is clear transparency from the individuals invested with authority. In the case of a decision-making body staffed by representatives and employees of interest and business groups that could be directly financially impacted by rules promulgated by EGLE, that transparency should include disclosure of conflicts of interest and members recusal from voting on rule packages where a conflict is present. Because the members of the ERRC represent a broad array of industry and special interests and because rules promulgated by EGLE in any given year can cover a broad array of topics, it is clear that occasionally members of the ERRC will have conflicts of interest during their tenure on the committee.

Unfortunately, the statute that enacted the ERRC is silent on the question of what process should be undertaken when a conflict arises. In a clear failing of the legislation, the statute does not require disclosure of conflicts nor recusal from voting despite both of these steps being common practice in governance institutions and decision-making bodies.

Individual members of the ERRC can take it upon themselves to disclose conflicts and recuse themselves from decision-making when those conflicts are present. Alternatively, the committee as a whole can ask members to recuse themselves where a concern over a conflict of interest exists. The ERRC should make both disclosure and recusal its standard practice and should adopt a formal conflict of interest policy to govern its members.

In the near term, however, we would ask the ERRC to take action in the case of Rule Set 2019-035, Supplying Water to the Public, which establishes maximum contaminant levels (MCLs) for several compounds of PFAS. Given the financial impact that PFAS drinking water standards will have both on drinking water systems and on brownfield sites contaminated by PFAS, likely several members of the ERRC have conflicts of interest that would bias their decision on the rules.

The undersigned are particularly concerned by the clear conflict present by Grant Trigger's employment with Racer Trust. Racer Trust owns several properties contaminated by PFAS and, in his private capacity overseeing Racer Trust, Mr. Trigger is responsible for the design,

implementation and cost of remediation of those contaminated properties. The Trust's properties will be directly impacted by the PFAS rules and in particular the lowering of the cleanup criteria standard for PFOS and PFOA that occurs in conjunction with the adoption of a new MCL for those substances. Mr. Trigger's organization will be directly and negatively financially impacted by the PFAS MCL. That is a very clear conflict of interest and we would call on the ERRC to ensure that Mr. Trigger recuses himself from any future role in the ERRC's deliberations on the PFAS MCL rules.

PFAS contamination of our drinking water is a public health crisis and requires swift action grounded in the best science available. Residents across the State of Michigan are looking to our decision-makers to protect drinking water and public health. No person involved in that decision should be biased by a private pecuniary interest. As an unelected oversight body, the duty to hold members accountable for their decisions falls to the members of the committee.

We urge the ERRC to take that role of self-accountability seriously and ensure that conflicts of interest are quickly disclosed and resolved.

Sincerely,

Mary Brady-Enerson
Clean Water Action

Charlotte Jameson
Michigan Environmental Council

Liz Kirkwood
FLOW

Christy McGillivray
Sierra Club

Rebecca Meuninck
Ecology Center

Nathan Murphy
Environment Michigan

Sylvia Orduño
People's Water Board

Cyndi Roper
Natural Resources Defense Council

Maureen D. Taylor
Michigan Welfare Rights Organization

Cathy Wusterbarth
Need Our Water

Grant R. Trigger
[redacted]
[redacted], MI [redacted]

November 13, 2019

Ms. Charlotte Jameson
Program Director Legislative Affairs, Energy and Drinking Water Policy
Michigan Environmental Council
Lansing, MI

Re: ERRC Conflict of Interest

Dear Ms. Jameson,

As you may know, I was asked to serve on the Environmental Rules Review Committee (ERRC) as an independent representative of the public, not in my role as Michigan Cleanup Manager for RACER Trust. While I am employed by RACER Trust and responsible to implement environmental cleanup plans in Michigan at former GM sites, I have no personal financial interest in any cleanup plans or the outcome of any decisions of the ERRC.

Moreover, I have nothing to disclose because my role with RACER Trust has been transparently known publicly for over 8 years. For the reasons noted in this letter, there is no basis for my recusal from the proceedings of the ERRC, and I have no intention to recuse myself from service on the ERRC.

To avoid any misunderstandings and misperceptions, it is also important to be clear about RACER Trust's role in cleaning up old GM sites – none of which, it should be noted, were contaminated by RACER. RACER Trust is an environmental response trust established as a qualified settlement fund, created by the U.S. Bankruptcy Court for the Southern District of New York in 2011 to assume title to, clean up, reposition and sell the properties abandoned by GM in its 2009 bankruptcy, including many in the State of Michigan. RACER Trust's annual budget and work plans are reviewed and approved by lead regulatory agencies in the states where we operate, as well as by the U.S. EPA. There is a distinct cleanup budget for each property (59 locations across 14 states), agreed to by State and Federal agencies. These budgets were set before RACER was formed and approved by the Bankruptcy Court. RACER has no profit motive and no cost-avoidance motive, other than to manage its environmental cleanup funding responsibly in cooperation with Federal and State agencies and in the interests of the communities where RACER is working.

RACER's mandate is to implement agency-approved cleanups that achieve the cleanup objectives set forth by the agencies, not by RACER. I am proud to have the opportunity to help

bring investment and jobs back to Michigan communities hurt by the GM bankruptcy and embrace the public good in RACER's mission.

I appreciate the opportunity for public service, and have served on numerous state, regional and national volunteer boards related to environmental and natural resource protection, including as the Michigan Environmental Council's first executive director, as a member of the Michigan Toxic Substances Control Commission and as a member of the Oakland County Brownfield Authority. I believe these boards/organizations work best when opportunity for thoughtful review of the direct and indirect consequences of proposed actions are understood and transparently explained. As we begin this process and ERRC members engage with each other through thoughtful and respectful dialogue, we can get to better outcomes.

I appreciate your interest in the ERRC process and am available at any time for further discussion on any topic of your choice. However, given the nature of my roles, I see no basis to recuse myself from any ERRC activities and have no plans to do so.

Sincerely,

Grant Trigger

cc: Original email distribution list