Message

From: Jonathan Weinberger [jonathan.weinberger@gm.com]
Sent: 5/30/2025 5:20:49 PM
To: Abboud, Michael [abboud.michael@epa.gov]
Subject: FW: [EXTERNAL] Fw: Termination of EPA Assistance Award: RD-84053401-1 Drexel University
Attachments: OMB Form 84053401-1.pdf; Termination_Memo_RD-84053401-1.pdf; Grant Summary (2).docx

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi again! See attached and below. Not GM related.

This is from a family member of mine who is doing excellent work that can actually be of benefit. I think they were awarded the first 2 years and the last year was cut and they are going to lay off some folks. Let me know what you think, thanks again, and hope to see you soon! Jonathan

---

From: Deutsch,Jonathan <st96d633@drexel.edu>
Sent: Saturday, May 24, 2025 2:05 PM
To: Jonathan Weinberger <jonathan.weinberger@gm.com>
Subject: [EXTERNAL] Fw: Termination of EPA Assistance Award: RD-84053401-1 Drexel University

ATTENTION: This email originated from outside of GM.

Jonathan,

Nice speaking with you this morning. As we discussed, attached is the termination notice we received from the EPA as well as a plain language summary of what we want to do here and why it's important to helping Americans waste less.

Any help you can offer in restoring our funds or finding private support would be appreciated. We are close to the finish line on this, having completed 2 out of three years of work and it would be a shame to throw it all away.

Jon

From: Lloyd, Keva <Lloyd.Keva@epa.gov>
Sent: Tuesday, May 13, 2025 2:06 PM
To: DUResearch <DUResearch@drexel.edu>
Cc: Holder, Robin <holder.robin@epa.gov>; Deutsch,Jonathan <st96d633@drexel.edu>; Hoysala, Sneha <Hoysala.Sneha@epa.gov>
Subject: Termination of EPA Assistance Award: RD-84053401-1 Drexel University

EXTERNAL.

RE: Termination of EPA Assistance Award

Dear EPA Grant Recipient:

Attached is your Termination of Award from the U.S. Environmental Protection Agency. The Federal Award Identification Number (FAIN) is on your agreement on the top of page one and in the subject line of this message. Please use this number in communicating with EPA about this grant.

Please carefully review the assistance agreement and the terms and conditions.

We recommend you forward the award document to any other personnel in your organization requiring information about the award. The recipient's signature is not required on this agreement.

For information regarding payments and financial reports, please refer to the following website at https://www.epa.gov/financial/grants. Additionally, the RTP Finance Center's email address is rtpfc-grants@epa.gov.

If you have any questions, please contact **Tim Watkins Headquarters Senior Resource Official** at Watkins.Tim@epa.gov.

Sincerely,

Keva Lloyd
Associate Award Official
(202) 564-0645
Lloyd.Keva@epa.gov

Attachments:
Official EPA Award Document
Termination Memo

	U.S. ENVIRONMENTAL PROTECTION AGENCY **Assistance Amendment**	**GRANT NUMBER (FAIN):** **84053401** **MODIFICATION NUMBER:** **1** **PROGRAM CODE:** **RD**	**DATE OF AWARD** 05/13/2025
		TYPE OF ACTION No Cost Amendment	**MAILING DATE** 05/13/2025
		PAYMENT METHOD: ASAP	**ACH#** Ex. 6 - Personal Privacy

RECIPIENT TYPE: Private University	**Send Payment Request to:** Contact EPA RTPFC at: rtpfc-grants@epa.gov
RECIPIENT: Drexel University 1505 Race Street, 8th Floor Philadelphia, PA 19102-1119 **EIN:** 23-1352630	**PAYEE:** Drexel University 1505 Race Street, 8th Floor Philadelphia, PA 19102-1119

PROJECT MANAGER	**EPA PROJECT OFFICER**	**EPA GRANT SPECIALIST**
Jonathan Deutsch 1505 Race Street, 8th Floor Philadelphia, PA 19102-1119 **Email:** jdeutsch@drexel.edu **Phone:** 215-571-4461	Sneha Hoysala 1200 Pennsylvania Ave. NW, 8104R Washingotn, DC 20460 **Email:** Hoysala.Sneha@epa.gov **Phone:** 202-564-2235	Robin Holder 1200 Pennsylvania Ave. NW 3903R Washington, DC 20460 **Email:** Holder.Robin@epa.gov **Phone:** 202-564-1532

PROJECT TITLE AND EXPLANATION OF CHANGES

Culinary Home Empowerment for Food Waste Prevention and Minimization (CHEF-WPM)

This amendment is to stop work; terminate the agreement; reduce performance period duration; curtail scope of work; and waive certain reporting requirements. Administrative terms and conditions are added.

Per 2 CFR 200.340 and the Termination General Terms and Conditions of this agreement, EPA is terminating this award. Your organization shall immediately stop work and take all reasonable steps to minimize the incurrence of costs otherwise allocable to the assistance agreement. See terms and conditions.

BUDGET PERIOD	**PROJECT PERIOD**	**TOTAL BUDGET PERIOD COST**	**TOTAL PROJECT PERIOD COST**
04/01/2023 - 05/13/2025	04/01/2025 - 05/13/2025	$ 739,381.00	$ 739,381.00

NOTICE OF AWARD

Based on your Application dated 02/09/2022 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards $ 0.00. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of $ 739,381.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.

ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)	**AWARD APPROVAL OFFICE**
ORGANIZATION / ADDRESS	**ORGANIZATION / ADDRESS**
Environmental Protection Agency, Grants Management & Business Operations Division 1200 Pennsylvania Ave, NW Mail code 3903R Washington, DC 20460	Environmental Protection Agency, OSAPE ORD - Office of Research and Development 1200 Pennsylvania Ave, N.W. Washington, DC 20460

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Digital signature applied by EPA Award Official for Devon Brown - Branch Chief, GMB **by** Keva Lloyd - Award Official Delegate	**DATE** 05/13/2025

EPA Funding Information

Ex. 4 - Trade Secrets, Commercial, or Financial Information that is Privileged or Confidential

Budget Summary Page

Ex. 4 - Trade Secrets, Commercial, or Financial Information that is Privileged or Confidential

Administrative Conditions

UNILATERAL TERMINATION

1. The Agency is asserting its right under 2 CFR 200.340 and the Termination General Term and Condition of this agreement to unilaterally terminate this award. This amendment serves as required notice under 2 CFR 200.341.

2. Consistent with 2 CFR 200.343 Effect of suspension and termination, costs to the recipient or subrecipient resulting from financial obligations incurred by the recipient or subrecipient after the termination of a Federal award are not allowable. Costs after termination are allowable if:

   a. The costs result from financial obligations which were properly incurred by the recipient or subrecipient before the effective date of suspension or termination, and not in anticipation of it; and

   b. The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

   c. The costs are reasonable and necessary termination costs consistent with 2 CFR 200.472.

3. Federal Financial Reporting (FFR) General Terms and Conditions is still in full force and effect. EPA recipients must submit the SF-425 no later than 120 calendar days after the end date of the period of performance of the award.

4. Programmatic Terms and Conditions. Performance reporting is still in full force and effect. The recipient must submit the final report no later than 120 calendar days after the period of performance.

In accordance with 2 CFR 200.329, the recipient agrees to submit performance reports that include information on each of the following areas:

   a. A comparison of accomplishments to the outputs/outcomes established in the assistance agreement work plan for the reporting period;

   b. Explanations on why established outputs/outcomes were not met; and

   c. Additional information, analysis, and explanation of cost overruns or high-than-expected-unit costs.

5. Waiver of Reports

The following reports are waived:

   a. Utilization of Disadvantaged Business Enterprises General Terms and Conditions, EPA Form 5700-52A.

   b. Tangible Personal Property Report, SF-428, General Terms and Conditions.

6. Record Retention

Access to Records, 2 CFR 200.337, is still in full force and effect. The termination of this award does not affect the right of EPA to disallow costs and recover funds on the basis of a later audit or other reviews. Information regarding record retention, property disposition in accordance with EPA regulations, and other frequently asked questions can be accessed at https://www.epa.gov/grants/frequent-questions-about-closeouts.

Programmatic Conditions

All Programmatic Conditions Remain the Same

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF MISSION SUPPORT

WASHINGTON, D.C. 20460

May 13, 2025

MEMORANDUM

SUBJECT: Termination of EPA Assistance Agreement RD-84053401-1 under 2 CFR 200.340

FROM: EPA Award Official

TO: Maria T. Schulthesis, Ph.D, Vice Provost of Research
Drexel University

The purpose of this communication is to notify you that the U.S. Environmental Protection Agency (EPA) is hereby terminating Assistance Agreement No. RD-84053401-1 awarded to Drexel University. This EPA Assistance Agreement is terminated in its entirety effective immediately on the grounds that the award no longer effectuates the program goals or agency priorities. The objectives of the award are no longer consistent with EPA funding priorities.

The EPA Administrator has determined that, per the Agency's obligations to the constitutional and statutory law of the United States, this priority includes ensuring that the Agency's grants do not conflict with the Agency's policy of prioritizing merit, fairness, and excellence in performing our statutory functions. In addition to complying with the law, it is vital that the Agency assess whether all grant payments are free from fraud, abuse, waste, and duplication, as well as to assess whether current grants are in the best interests of the United States.

The grant specified above provides funding for programs that promote initiatives that conflict with the Agency's policy of prioritizing merit, fairness, and excellence in performing our statutory functions; that are not free from fraud, abuse, waste, or duplication; or that otherwise fail to serve the best interests of the United States. The grant is inconsistent with, and no longer effectuates, Agency priorities.

The process for closeout is generally outlined in 2 CFR 200.344. EPA is clarifying what reports are required and what reports are waived below. Other requirements are still in effect if applicable to your grant.

EPA is requiring the following closeout reports due within 120 days of closeout (2 CFR 200.344a:)

- Final Federal Financial Report, SF-425
- Final Technical Report
- Other programmatic reports identified in your terms and conditions

As part of this termination, EPA is waiving the following closeout reports:

- Property Report, SF-428
- Final Minority Business Enterprise/Woman Business Enterprise Utilization Under Federal Grants and Cooperative Agreements, EPA Form 5700-52A

The recipient may request payment from the Automated Standard Application Payments (ASAP) system for allowable costs incurred up to the date of this memo provided that such costs were contained in the approved workplan. Costs incurred by you after this termination are allowable only if (a) those costs were properly incurred by you before the effective date of this termination, and not in anticipation of it; and (b) those costs would be allowable if your federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect. *See* 2 C.F.R. § 200.343. You are encouraged to carefully review and discharge your closeout responsibilities set forth in 2 C.F.R. § 200.344-45 and your award agreement. Those responsibilities include, but are not limited to, your obligation to "promptly refund any unobligated funds" that have been paid out but "are not authorized to be retained." *See* 2 C.F.R. § 200.344(g).

Also, per 2 CFR 200.472, a recipient may use grant funds to properly closeout their grant including reasonable and necessary costs that might occur after the date of this memo. If the recipient drew down funds from ASAP for costs beyond the termination date or for costs that exceed the amount necessary to properly closeout their grant, the recipient must contact RTPFC at rtpfc-grants@epa.gov for instructions on how to return the excess funds.

The EPA Grants Management Office has issued an amendment to the agreement to document the termination.

If you wish to dispute this termination decision, the Disputes Decision Official (DDO) is Mr. Michael Molina, Principal Deputy Assistant Administrator, Office of Mission Support. Mr. Molina must receive the Dispute no later than 30 calendar days from the date this termination notice is electronically sent to you. Disputes must be sent electronically by email to the DDO, at Molina.Michael@epa.gov with a copy to the EPA Award Official, Mr. Devon Brown, Brown.Devon@epa.gov, within the 30-day period stated above. The Dispute submitted to the DDO must include: (1) A copy of the disputed Agency Decision; (2) A detailed statement of the specific legal and factual grounds for the Dispute, including copies of any supporting documents; (3) The specific remedy or relief you seek under the Dispute; and (4) The name and contact information, including email address, of your designated point of contact for the Dispute. *See* 2 CFR 1500.15

The requirements on post-closeout adjustments and continuing responsibilities, including audit and record retention requirements, at 2 CFR 200.345 remain in effect.

ATTACHMENT
Amendment Document

cc: Robin Holder, EPA Grant Specialist
Sneha Hoysala, EPA Project Officer
Dr. Jonathan Deutsch, Grantee Program Manager

Culinary Home Empowerment for Food Waste Prevention and Minimization (CHEF-WPM)

Team

Jonathan Deutsch, Ph.D., CRC, PI, Professor of Culinary Arts and Food Science, Department of Health Sciences, Drexel University

Brandy-Joe Milliron, Ph.D., Co-I, Association Professor of Nutrition Sciences, Department of Health Sciences, Drexel University

Roni Neff, Ph.D., Professor, Scientific Advisor, Johns Hopkins Bloomberg School of Public Health

Rachel Sherman, MPH, Associate Director, Drexel Food Lab, Department of Health Sciences, Drexel University

Ex. 6 - Personal Privacy Graduate Research Assistant, Department of Health Sciences, Drexel University

Alison Mountford, Chef-Educator, Ends + Stems

Introduction

The EPA funded this interdisciplinary inter-institutional team from Drexel to conduct a series of studies designed to help home cooks reduce food waste to the benefit of the environment (approximately 8% of greenhouse gas emissions arise from food produced but not consumed; up to 40% of food produced is wasted), nutrition, and household finances (the typical US household spends $1,500 annually on food that goes uneaten).

On May 13, 2025 we were informed that our grant was terminated.

Abstract

The objectives of this proposed research are to (1) develop and evaluate a series of food waste prevention and minimization culinary education videos for home cooks, adapted from professional culinary training, called Culinary Home Empowerment for Food Waste Prevention and Minimization (CHEF-WPM), (2) assess a series of informal and formal online interventions to determine the efficacy of each component of CHEF-WPM across a diverse range of U.S. consumers, and (3) recommend effective ways to nationally scale effective elements of CHEFWPM. The hypotheses being tested are (1) adapting and delivering selected elements of professional culinary training for home cooks is effective at reducing household food waste and strengthening consumer motivation, opportunity, and ability to reduce food waste, and (2) distributing selected elements of professional culinary training in small modules for home cooks and making the content available in structured community-based classes is desired by consumers.

Progress Summary

Aim 1: Develop a food waste prevention and minimization culinary education video program (CHEF-WMP) for home cooks:
Status: Completed

Aim 2: Assess the effects of CHEF-WMP at the population-level across process (feasibility, usage, acceptability, satisfaction) and preliminary efficacy (motivation, opportunity, ability) metrics:

Status: In Progress

- All surveys (baseline, 3-month, and 6-month follow-ups) have been successfully distributed.
- Data analysis has been completed for the baseline and 3-month time points.
- Data analysis for the 6-month follow-up is in progress.
- Compensation distribution for the 367 participants that completed the 6-month follow-up is in progress.
- As of May 15, 2025, 726 out of 1068 participants have completed the post-video acceptability and satisfaction survey.

Aim 3: Assess the effects of CHEF-WMP at the community level
Status: In Progress

- Two out of three planned cohorts (40 participants) have completed the full 8-week virtual program.
- The third and final cohort (21 participants enrolled) began on April 22, 2025, and successfully completed three sessions to date. This final cohort did not meet on May 13, 2025 or beyond due to the notification of the funding termination and federal guidance to stop immediately.
- Compensation for the third cohort of community participants is in process, as of May 20th, 2025.

Ask

We are seeking funding in the amount of $120,000 ($60,000 with a 1:1 match available) to complete our data collection efforts, compensate research participants, and disseminate our findings. Despite our recent setback, our team is still committed to the work and sharing our results. This additional support will allow us to complete our remaining aims and share promising results to reduce food waste to aid the help of people, planet and economies.

Message	
From:	Eric Amidon Ex. 6 - Personal Privacy
Sent:	3/15/2025 11:53:56 AM
To:	Amidon, Eric [Amidon.Eric@epa.gov]
Subject:	Fwd: FW: Petition under Presidential Executive Orders re: Alle-Catt Wind Energy, LLC
Attachments:	Coalition petition under Exec. Orders re. Alle-Catt wind.pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

---------- Forwarded message ---------
From: **Mark Heberling** <chairman@cattcogop.com>
Date: Thu, Mar 13, 2025 at 11:19 AM
Subject: Fwd: FW: Petition under Presidential Executive Orders re: Alle-Catt Wind Energy, LLC
To: Eric Amidon Ex. 6 - Personal Privacy

Eric,

I am writing to bring to you and Administrator Zeldin attention a petition submitted by Gary A. Abraham, Esq., on behalf of the Coalition of Concerned Citizens. This petition opposes the Alle-Catt Wind Energy project in Western New York and requests the suspension, review, and revocation of federal authorizations and permits related to the project. It is increasingly important as its time sensitive as we understand that the review process timeline of Federal Agencies has six months' wait. It would be helpful if that process could be expedited as it is anticipated that the developer will look to avoid President Trumps energy initiatives and policies. Additionally, I encourage you to reach out to the Coalition Attorney Gary Abraham as he is expertly knowledgeable about this project.

Thank you for all you do and feel free to conact me direclty for any questions or concerns.

Sincerely,
Mark Heberling

From: Gary Abraham <gabraham44@eznet.net>
Sent: Wednesday, March 5, 2025 4:57 PM

To: pam.bondi@usdoj.gov; attorney.general@usdoj.gov; The.Secretary@hq.doe.gov; exsec@ios.doi.gov; Zeldin.Lee@epa.gov; oepetitions@faa.gov; bill.kieffer@faa.gov; brenda.mumper@faa.gov; Ex. 6 - U.S. Army Corps of Engineers Personnel Joseph.M.Rowley@usace.army.mil; //www.lrd.usace.army.mil/Wetlands-Permits@ispnet.us; LRB.Regulatory.PermitCompliance@usace.army.mil
Subject: Petition under Presidential Executive Orders re: Alle-Catt Wind Energy, LLC

Dear Attorney General Bondi, Secretaries Wright and Burgum, Administrators Zeldin and Rocheleau, and Biologist [redacted] and Physical Scientist Rowley:

Please accept the attached Petition seeking to block the Alle-Catt Wind Energy project proposal in western New York. Do not hesitate to contact me with any questions or concerns.

Respectfully submitted,

--Gary Abraham

--
Law Office of Gary A. Abraham
4939 Conlan Rd.
Great Valley, NY 14741
(716) 790-6141
www.garyabraham.com

--
Mark Henry Heberling
Chairman
Cattaraugus County Republican Committee

PO BOX 53
Little Valley, NY 14755

Cell: 716-796-1206
Cattaraugus County GOP (cattcogop.com)

"Always vote for principle, though you may vote alone" John Quincy Adams

LAW OFFICE OF GARY A. ABRAHAM

4939 Conlan Rd.
Great Valley, New York 14741
716-790-6141; fax 716-271-6465

gabraham44@eznet.net
www.garyabraham.com

March 5, 2025

VIA EMAIL

Attorney General Pam Bondi
U.S. Department of Justice
pam.bondi@usdoj.gov;
attorney.general@usdoj.gov

Secretary Chris Wright
U.S. Department of Energy
The.Secretary@hq.doe.gov

Secretary Doug Burgum
U.S. Department of the Interior
exsec@ios.doi.gov

Administrator Lee Zeldin
U.S. Environmental Protection Agency
Zeldin.Lee@epa.gov

Administrator Chris Rocheleau
Federal Aviation Administration
oepetitions@faa.gov
bill.kieffer@faa.gov
brenda.mumper@faa.gov

Ex. 6 - U.S. Army Corps of Engineers Personnel Biologist
Joseph Rowley, Physical Scientist
Department of the Army
U.S. Army Corps of Engineers, Buffalo District
Ex. 6 - U.S. Army Corps of Engineers Personnel
Joseph.M.Rowley@usace.army.mil
https://www.lrd.usace.army.mil/Wetlands-Permits
LRB.Regulatory.PermitCompliance@usace.army.mil

PETITION TO IMMEDIATELY SUSPEND, REVIEW AND REVOKE FEDERAL AUTHORIZATIONS AND ONGOING PERMITTING PROCESSES IN CONNECTION WITH THE ALLE-CATT WIND PROJECT IN WESTERN NEW YORK AND TO ADDRESS CONSTITUTIONAL ISSUES

Dear Attorney General Bondi, Secretaries Wright and Burgum, Administrators Zeldin and Rocheleau, and Biologist [redacted] and Physical Scientist Rowley:

On behalf of the Coalition of Concerned Citizens, an active party in the state siting proceeding reviewing this wind farm proposal, we hereby submit this letter Petition requesting that your respective agencies take immediate steps to suspend all preexisting authorizations, and to halt all ongoing federal approvals and permitting processes. We request such action pursuant to President Trump's Executive Order, "Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects" ("Executive Order on Wind Projects"), § 2(a) (January 20, 2025),[1] and "Unleashing American Energy" ("Executive Order on Energy"), §§ 2, 3 and 7 (January 20, 2025).[2] Under Section 2(d) of the Executive Order on Wind Projects, the U.S. Attorney General may "seek other appropriate relief consistent with this order". Accordingly, we also request that Attorney General Bondi take appropriate steps to address constitutional violations presented by New York's conditional approval of the project.

This matter is timely, requiring your immediate attention, because Alle-Catt, a subsidiary of Chicago-based renewable energy giant Invenergy, has not obtained approval from the State of New York to commence construction of wind turbine pads or wind turbines.[3]

As explained in more detail below, the project would result in serious harm to the regional environment and to *rural residents* forced to host it, and its costs cannot be justified based on its own stated need and purpose. The project would be the largest wind farm in the state of New York if it is built: Alle-Catt requires 30,000 acres of private leaseholds and its project area would be about 100 square miles. The project must also connect to the nearest utility substation by means of a newly constructed 75-foot-wide nine-mile transmission corridor from the project area, through mostly forested land.

This letter Petition requests relief with regard to the following federal approvals or permits:

1. Federal Aviation Administration "No Hazard" Determinations (83 wind turbines)
2. U.S. Fish and Wildlife Service approval for the taking of protected wildlife (*cf.* 2023-0037807)
3. U.S. Army Corps of Engineers Clean Water Act Section 404 Permit (LRB-2021-00420)

The impacts discussed in the next Section were found in the course of the state proceeding but have been disregarded by the Siting Board. This disregard has been explicitly justified in the name of an ideologically driven but physically impossible state energy policy seeking 70% of the state's electricity from renewable energy projects like this one by the year 2030, and 100% of the state's electricity from "zero emissions" sources, including 85% renewables by 2040.[4]

ENVIRONMENTAL IMPACTS

Alle-Catt proposes to site 83 turbines in the heavily forested area of western New York towns of Arcade, Centerville, Rushford, Farmersville and Freedom, across Wyoming, Allegany and Cattaraugus counties. Each turbine would have a maximum tip height of 591 feet and maximum blade diameter of 518 feet. The project would require 82 miles of access roads, and eleven additional non-generating towers, including a 100-foot microwave communication tower, three aircraft detection towers up to 125 feet in height, and seven 98.5-foot tall towers to detect the presence of eagles.[5]

The hearing examiners in the state siting proceeding found that between 480 and 515 birds will be killed annually, (RD, 55-56, 75, 84); at least 41 Bald Eagles will be killed over 30 years, attributed to one active nest within the project area, and there are "six other active breeding nests in close proximity", (id., 72-73); the endangered Northern Long-Eared Bat will be killed, (*id.*, 58-59, 65); 688 acres of forested bat habitat would be cleared, and even Invenergy acknowledged that local bat populations will not survive the mortality rate;[6] the project would clear-cut 1,550 acres of interior forest, (RD, 25-26, 29); and another 1,686 acres of unbroken forest would be fragmented with interconnection lines and access roads, (id., 25).[7] The Siting Board did not dispute these findings.[8]

The Siting Board disregarded the impacts Alle-Catt can be expected to have on the Amish in Freedom and Farmersville. My expert on the Amish from Elizabethtown College, Pennsylvania testified that the 22-family community will migrate out *en masse* if the project is built.[9] A Constitutional religious infringement claim was brought to New York's highest court, which declined to hear the claim "upon the ground that no substantial constitutional question is directly involved".[10]

The Siting Board also disregarded testimony by a state Department of Health (DOH) research scientist. New York noise policy classifies a 10 decibel increase over the pre-existing sound level in a community from a new noise source as intrusive, and 20 decibels as very intrusive to intolerable.[11] The Coalition submitted background sound studies conducted in five rural communities in western New York showing that the pre-existing sound levels are about 25 dBA, and lower at night.[12] However, the Siting Board allowed 45 dBA (Leq, or average) of wind turbine noise.

DOH testified that wind turbines generate over 100 decibels of noise, and "health-related effects of audible noise include annoyance, sleep disturbance, cognitive performance reduction, effects on social behavior, cardiovascular effects, and psycho-physiological effects (e.g., noise induced stress reaction)" unless properly regulated.[13] DOH recommended a regulatory limit of 45 dBA Lden (or 39-40 dBA average), and the Department of Public Service recommended 42 dBA average.[14]

Alle-Catt's project manager (a non-expert) testified that "[t]he global warming crisis" calls for projects that "meet New York's clean energy goals" to be accommodated with a 45 dBA average limit, even though DOH's health-protective recommendation "may be technologically achievable.[15] The Siting Board credited his testimony and ordered the noise limit Alle-Catt requested.[16]

Finally, the Siting Board disregarded uncontested evidence from my energy systems expert, that continued siting of large-scale intermittent wind energy facilities in New York progressively destabilizes the grid and cannot deliver electricity to the downstate metropolitan New York City region—where electricity is only 9% carbon-free—without massive investments in new transmission capacity.[17] The Board agreed but speculated that Alle-Catt's electricity generation will be transported downstate "in the future". The Board concluded that the project proposal is "consistent with the State's energy policy and planning objectives."[18]

COSTS ASSOCIATED WITH THE INTERMITTENT GENERATION OF ELECTRICITY

Under Section 2(a) of the Executive Order on Wind Projects federal agencies must "consider the economic costs associated with the intermittent generation of electricity and the effect of subsidies on the viability of the wind industry." In addition, under Section 7 of the Executive Order on Energy, "[a]ll agencies shall immediately pause the disbursement of funds appropriated through the [Inflation Reduction Act]".

The U.S. Treasury's fiscal year 2026 report puts the 10-year cost of renewable energy tax credits under the IRA at $421 billion, a nearly 7-fold increase since 2021, the year before the IRA became law. This compares to $23.5 billion in tax credits for all hydrocarbons during the same period.[19] The IRA allows these credits to be monetized and transferred to unrelated entities, providing Alle-Catt with over $600 million over the life of the project.[20]

Additional state and local costs of the Alle-Catt proposal should be considered. The project would be spread across three rural counties and Alle-Catt has obtained sales tax and mortgage recording tax breaks and property tax abatement from two of these county's industrial development authorities. In Cattaraugus County, Alle-Catt is seeking financial assistance in the amount of $51.7 million in return for creating no more than 10 permanent part-time and full-time jobs—that is, an average of $4.3 million in foregone tax revenue for each job.[21]

Although difficult to quantify, modifications to the state's electric system that would not be needed but for projects like Alle-Catt require substantial additional costs. The state's independent grid operator has found that large-scale renewables operate within several transmission-constrained "pockets" that occur between western New York and New York City, preventing renewable energy generated upstate from reaching the City.[22] Because they remain bottled upstate for the foreseeable future, NYSIO has had to double the rate that it orders wind projects to curtail operations in order to avoid overloading the system.[23] Thus, to utilize Alle-Catt's intermittent energy outside western New York, where electricity is today 91% carbon-free owing to nuclear and hydropower, will require costly system changes.

SPECIFIC FEDERAL PERMITS AND APPROVALS REQUESTED FOR SUSPENSION, REVIEW AND REVOCATION

1. <u>Federal Aviation Administration (FAA) "No Hazard" Determinations for wind turbines</u>

On March 10, 2023 FAA issued notices to Alle-Catt that "No Hazard" Determinations for 83 individual wind turbine sites "will expire on 09/10/2024 unless otherwise extended, revised, or terminated by this office."[24] None of these determinations have been extended or revised. Accordingly, "No Hazard" Determinations have expired for Alle-Catt's wind turbines.

Under the Executive Order on Wind Projects, Section 2(a), President Trump directs "the heads of all" federal agencies not to "issue new or *renewed approvals* . . . for onshore or offshore wind projects pending the completion of a comprehensive assessment and review of Federal wind . . . permitting practices."

2. <u>U.S. Fish and Wildlife Service (USFWS) approvals for the taking of federally protected wildlife</u>

The Northern Long-eared Bat (*Myotis septentrionalis*) (NLEB) listed as endangered under Endangered Species Act (ESA), occurs within the Alle-Catt project area and is on the verge of extinction.[25]

The Bald Eagle, protected under the Bald and Golden Eagle Protection Act and the Migratory Bird Act, occurs within the Alle-Catt project area. The Project area is a USFWS Category 1 - High Mortality Risk to Eagles.[26] One nest would be surrounded by five wind turbines one mile or less from the nest, resulting in the taking of 41 Bald Eagles during the projected 30-year life of the project.[27]

To mitigate the loss of 41 Bald Eagles, and another 41 eagles at a second Invenergy wind project in the region, the Siting Board approved a compensatory mitigation proposal under which Invenergy would make a payment of $1,997,000.00 to a wildlife hospital at Cornell University.[28] However, the mitigation plan makes no provision for developing or protecting Bald Eagle habitat, nor does it estimate how many rehabilitated eagles are likely to be returned to the wild.[29]

There is no indication that USFWS has ever considered Alle-Catt's proposed taking of protected wildlife species.[30]

Pursuant to the Executive Order on Wind Projects, USFWS has ceased to issue permits for the incidental taking of eagles for wind energy facilities.[31] In light of the absence of any consultation with USFWS regarding Alle-Catt's projected takings of protected wildlife species, USFWS should suspend the state Siting Board's approval for the takings.[32]

3. Clean Water Act Section 404 Permit (U.S. Army Corps of Engineers, Project No. LRB-2021-00420)[33]

On November 14, 2024, the U.S. Army Corps of Engineers, Buffalo District, (USACE), issued a conditional Section 404 Permit for the proposed Alle-Catt project. The Section 404 Permit may be suspended and revoked where significant new information surfaces that was not considered in reaching the original public interest decision "at the request of . . . a third party".[34]

Because the Alle-Catt project proposal is not dependent on access to wetlands and streams—it is not "water dependent"—the Army Corps was required to deny a permit under NEPA and the U.S. Environmental Protection Agency's Clean Water Act Section 404 (b)(1) Guidelines.[35] According to the Army Corps' *Alternatives Analysis Framework*, "[u]nder NEPA, the Corps must evaluate a 'no action' alternative", which results from project modification that fully avoids stream and wetlands impacts—thus obviating the need for a permit—or from the Corps' denial of the Section 404 permit.[36] The *Framework* clarifies that an applicant's self-serving description of need precludes permitting where the description is so narrow as to preclude alternatives, or where the described need is speculative.[37] Both grounds for permit denial are present here, as Alle-Catt stated that no alternative sites exist that would advance New York's renewable energy policy, but as noted above, the project's energy cannot be utilized downstate and is not needed in upstate New York.

Purpose and need for a project must be in the public interest to support issuance of a Section 404 permit.[38] Here, the project purpose—to contribute to New York's "clean energy" goals—is clearly inconsistent with the Executive Orders invoked in this letter Petition. Accordingly, the Army Corp should immediately suspend Alle-Catt's Section 404 Permit and, upon review, revoke the Permit.

CONSTITUTIONAL ISSUES

In the absence of a "compelling" governmental interest, the Constitution's Free Exercise Clause protects citizens' right to practice their religion as they please. U.S. Const. § 1. Here, the state Siting Board's interest in ignoring the right to practice the Amish religion, discussed previously, is based on a speculative and ideologically motivated interest in achieving a "net zero" electric system, which falls far short of a compelling governmental interest.

The 14th Amendment to the Constitution provides that no state can "deny to any person within its jurisdiction the equal protection of the laws." Here, although they are similarly-situated residents, the state Siting Board ordered different health-based standards for any "participant residence", defined as a residence whose owner contracted with Alle-Catt, compared to a "non-participant residence", defined as a residence whose owner did not so contract.[39] Thus, the Siting Board allows any participant residence to be exposed to up to 55 dBA of wind turbine noise, compared to 45 dBA for a non-participant residence,[40] and unlimited exposure to shadow flicker, compared to 30 hours per year allowed for "non-participants".[41] Differentiating residents by their contract status lacks any rational basis, and the state Siting Board offered none.[42]

Under the 5th Amendment to the Constitution, adjacent property owners' ability to command setback distances for neighboring property by ordinance is an unconstitutional delegation to private parties.[43]

The Coalition urges Attorney General Bondi to pursue these Constitutional claims, in an appropriate federal court, to enjoin New York State and its agencies from finally approving the Alle-Catt project, and to consider similar action to enjoin New York from advancing any wind farms.

CONCLUSION

Alle-Catt would cause the "grave harm" to wildlife;[44] would impose "economic costs" that cannot be justified by providing "intermittent energy", including the need for staggering subsidies to ensure "the viability of the wind industry",[45] such as "funds appropriated through the Inflation Reduction Act of 2022";[46] and is "unduly burdensome" on reliable "domestic energy resources" including low-emissions natural gas and nuclear power.[47] Under the Executive Orders, and for the reasons provided in this letter Petition, you should take immediate action to ensure that the Alle-Catt project is not built.

Respectfully submitted,

Gary A. Abraham, Esq.
Attorney for the Coalition of Concerned Citizens

gaa/
cc: client

1 Available at <https://www.whitehouse.gov/presidential-actions/2025/01/temporary-withdrawal-of-all-areas-on-the-outer-continental-shelf-from-offshore-wind-leasing-and-review-of-the-federal-governments-leasing-and-permitting-practices-for-wind-projects/>.

2 Available at <https://www.whitehouse.gov/presidential-actions/2025/01/unleashing-american-energy>.

3 *See* NY PSC Case 17-F-0282, *Application of Alle-Catt Wind Energy LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for a Proposed Wind Energy Project, Located in Allegany, Cattaraugus, and Wyoming Counties, New York, in the Towns of Arcade, Centerville, Farmersville, Freedom, and Rushford*. The most recent Order in the state proceeding (discussed further below) provides: "A Full Construction 'Notice to Proceed' will not be issued until the Final Decommissioning Plan, as required by . . . the compliance filings on noise, as required by Certificate Condition 68, are approved by the Commission." *Id.*, Order Approving Multiple Compliance Filings Subject to Conditions (December 24, 2024), 36, Condition 20. To date the compliance filings on noise, requiring a demonstration that project will not expose nearby residents to excessive noise, have not been approved. The e-docket for this case is readily available by searching "NY PSC 17-F-0282".

4 NY PSC Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard*, Order Adopting Modifications to the Clean Energy Standard (October 15, 2020).

5 NY PSC Case 17-F-0282, Application of Alle-Catt Wind Energy LLC, Alle-Catt "Certificate Amendment Overview", filed January 30, 2023.

6 *Id.*, Application Exhibit 22 ("Terrestrial Ecology and Wetlands") (December 18, 2018), 26.

7 *Id.*, Recommended Decision of the Hearing Examiners (February 27, 2020), 25, cited as "RD".

8 *Id.*, Order Granting Certificate, 4 and *passim*.

9 The Amish migrated to the area 20 years ago to escape suburbanization in Ohio. Their religious beliefs require that they live away from industrial influences, and they will not tolerate the industrialization of their community with 600-foot-high wind turbines. *See id.*, Direct Testimony of Stephen M. Nolt, Ph.D (October 7, 2019); Rebuttal Testimony of Stephen M. Nolt, Ph.D (November 1, 2019). The hearing examiners ruled that the religious practices of the Amish are irrelevant, and they should be treated like anybody else. *Id.*, RD at 146-147. The Siting Board noted only that concerns about the Alle-Catt project's impacts on the Amish were raised. *Id.*, Order Granting Certificate, 11.

10 *Coalition of Concerned Citizens and Dennis Gaffin, as its President v. New York State Board, on Electric Generation Siting and the Environment, and Alle-Catt Wind Energy LLC*, 182 N.E.3d 350, 37 N.Y.3d 1168, 161 N.Y.S.3d 654, 2022 N.Y. LEXIS 96, 2022 WL 402366 (February 10, 2022).

11 NYS Department of Environmental Conservation, "Assessing and Mitigating Noise Impacts" (2001), 15, available at <https://www.dec.ny.gov/docs/permits_ej_operations_pdf/noise2000.pdf>.

12 PSC Case 17-F-0282, *Application of Alle-Catt Wind Energy LLC*, Direct Testimony of Richard R. James, INCE, (October 7, 2019), Exhibits 2 through 6.

13 *Id.*, Direct Testimony of Henry M. Spliethoff, DOH (November 26, 2019), 5:10-18.

14 *Id.*, 6:11-17 and *passim*. "[T]he Lden is an equivalent 1-year sound level where no penalty is added to the daytime hours, but 5 and 10 dBA penalties are added to the evening time and the nighttime periods respectively." *Id.*, Testimony of Miguel Moreno-Caballero(NY Department of Public Service) (DPS), 52:9-13. DPS testified that 45 dBA Lden converts to "40 to 41 dBA short-term noise limits" and recommended "a short-term noise level of 42 dBA Leq 8-hour, because a 40 dBA limit would be unreasonably restrictive." *Id.*, Testimony of Miguel Moreno-Caballero, 52:19-53:11.

15 *Id.*, Rebuttal Testimony of Eric Miller (November 1, 2019), 8.

16 *Id.*, Order Granting Certificate, Appendix A, Condition 68 (ordering a "design goal" of 45 dBA Leq 8-hour). As noted above in footnote 3, Alle-Catt has not demonstrated this is achieveable.

17 *Id.*, Rebuttal Testimony of Thomas Kreutz (December 2, 2019); Statement in Lieu of Kreutz Testimony (October 4, 2019).

18 *Id.*, Order Granting Certificate, 81-84.

19 U.S. Department of the Treasury, "Tax Expenditure Budget for Fiscal Year 2026" (November 27, 2024), Table 1 (items 22 and 23 for renewables; items 9 through 20 for hydrocarbons), available at <https://home.treasury.gov/system/files/131/Tax-Expenditures-FY2026.pdf>.

20 Under the IRA, the PTC is currently valued at 2.75 cents per kilowatt-hour of electricity generated, with the value adjusted annually for inflation. A functionally similar Clean Energy Production Tax Credit replaces the PTC after January 1, 2025. *See* U.S. EPA, "Summary of Inflation Reduction Act provisions related to renewable energy", available at <https://www.epa.gov/green-power-markets/ summary-inflation-reduction-act-provisions-related-renewable-energy> (citing Section 13701 of the IRA). The IRA also allows qualified renewable energy facilities "to directly monetize specific tax credits", including the Clean Energy Production Tax Credit, by "transfer[ing] all or a portion of certain tax credits, including the ITC and PTC, to an unrelated party." *Id. Cf.* Internal Revenue Code § 6417, enacted by IRA §§45, 45Y. Wind energy projects in New York have operated in the last few years within a range of 23-25% efficiency. *See* New York Independent System Operator (NYISO), "NYCA Renewables 2023", at 9, available at <https://www.nyiso.com/documents/ 20142/29609937/2023-NYCA-Renewables-Presentation.pdf/b4b189e8-e213-baf1-9f81-ac425342a2ea>. At 2.75 cents per KWh, or $27.50 per MWh, assuming a 25% annual capacity factor for Alle-Catt's 340 MW design (340 MW X 0.25X 8,760 hrs./yr.), under the IRA Alle-Catt may monetize $30,714,750 in tax credits per year, or $614.25 million over the anticipated 30-year life of the project.

21 County of Cattaraugus Industrial Development Agency, "Notice of Public Hearing and Contemplated Deviation" (December 16, 2024), 2, available at <https://cattcoida.com/wp-content/uploads/2024/12/PH-Deviation-Letter-to-ATJ-Letter-re-Public-Hearing-Notice-Exhibits-Multi-Municipalities-Alle-Catt-4927-0937-2679-1.pdf>. Lesser amounts of financial assistance have been secured from the other two counties.

22 NYISO, *Power Trends 2022*, 40, available at <https://www.nyiso.com/-/power-trends-2022-annual-grid-and-markets-report>. Recently, NYISO reported optimism that these transmission constraints would soon be resolved, based largely on a proposal by the New York Power Authority (Invenergy was a partner) to build a new bulk transmission line from the Catskills to Queens, the Clean Path NY project. NYISO, "2023-2042 System & Resource Outlook" (July 23, 2024), 62, available at <https://www.nyiso.com/documents/20142/ 46037414/2023-2042-System-Resource-Outlook.pdf>. The line would originate about 180 miles east of the Alle-Catt project site, so it would not transport energy from western New York. However, late last year Clean Path NY's REC contract was canceled and the project has been suspended indefinitely. PSC Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean*

Energy Standard, Termination of CPNY Agreement for Procurement of Tier 4 Renewable Energy Certificates (November 27, 2024).

23 NYISO, *Power Trends 2024*, 47 (noting that annual curtailment orders jumped from 84 GWh in 2021 to 162 GWh in 2022 and 2023), available at <https://www.nyiso.com/https://www.nyiso.com/power-trends>.

24 PSC Case 17-F-0282, *Application of Alle-Catt Wind Energy LLC*, Alle-Catt, "FAA Information Filing Combined" (filed March 31, 2024) (reproducing 83 "No Hazard" determinations under Aeronautical Study Nos. 2019-WTE-159-OE through 2019-WTE-273-OE).

25 *Id.*, RD, 55-72. On November 29, 2022 USFWS reclassified the Northern Long-Eared Bat as endangered under the ESA, effective on March 31, 2023. 87 Fed.Reg. 73488 (November 30, 2022). "The bat faces extinction due to the range-wide impacts of white-nose syndrome, a deadly disease affecting cave-dwelling bats across the continent." USFWS, "Northern Long-eared Bat", available at <https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis>.

26 *Id.*, "Net Conservation Benefit Plan (NCBP) for Northern Long-Eared Bat (NLEB)" (May 24, 2023), Appendix C, "Post-Construction Avian and Bat Monitoring and Adaptive Management Plan", 79-80.

27 *Id.*, RD, 73.

28 *Id.*, "Net Conservation Benefit Plan for the Bald Eagle (filed May 4, 2023), 6.

29 *Id.*, Coalition Comments (May 24, 2023), Attachment, Hickory Creek Consulting LLC, "Review of Proposed Mitigation for Bald Eagle Impacts, Net Conservation Benefit Plan Alle-Catt Wind Farm", 5. It should be noted that U.S. EPA's Clean Water Act Section 404 (b)(1) Guidelines, (40 CFR § 230), at pp. 5-6 provides: "Compensatory mitigation may *not* be used as a method to reduce environmental impacts in the evaluation of alternatives under the Guidelines. . . . Compensatory mitigation cannot be used to 'buy down' environmental impacts when determining the LEDPA [least environmentally damaging practicable alternative]." (emphasis in orig.).

30 *See* USFWS, Project 2023-0037807, "Record of project representative's no effect determination for 'Alle-Catt Wind Energy Permittee Responsible Mitigation'" (June 7, 2024).

31 *See* USFWS, "Eagle Incidental Take (General Permit)", at <https://fwsepermits.servicenowservices.com/fws?id=fws_kb_view&sys_id=63943c8edbb042900a66e46b13961966>.

32 New York regulations (6 NYCRR Part 182) require avoidance and mitigation of the taking of protected wildlife species under a federal delegation, and were applied in the Article 10 proceeding.

33 On June 30, 2023, the Coalition submitted comments opposing this permit based on the environmental impacts discussed above, and on the purely speculative need for the project given the inability to utilize Alle-Catt's electric output downstate where it is needed, as previously discussed, rather than upstate where it is not needed. These comments are incorporated as if fully set forth here.

34 33 CFR § 325.7(a). *Cf.* 33 CFR §§ 325.7(c), (d).

35 40 CFR Part 230.

36 *Framework*, 1, available at <https://www.nwp.usace.army.mil/Portals/24/AlternativesAnalysisFrameworkenclosure_5-29-20.pdf>.

37 *Id.*, 2-4.

38 *Id.*, 3 ("when appropriate, the Corps will revise the project purpose based on a public interest perspective").

39 PSC Case 17-F-0282, *Application of Alle-Catt Wind Energy LLC*, Order Granting Certificate, Appendix A, Condition 7(b) (defining non-participant and participant residences).

40 *Id.*, Conditions 68(d)(v) and 72(a).

41 *Id.*, Condition 57. Shadow flicker is the annoying light-strobing caused by wind turbine blades moving when the sun rises or sets behind them. DOH testified in the Article 10 proceeding that "high annoyance" that results from exposure to shadow flicker for more than eight hours per day is a potential adverse health impact, extending more than a mile from wind turbines. DOH also testified that wind turbine noise is a potential adverse health impact. The Siting Board rejected this testimony.

42 It has long been held in this nation that contracts may not interfere with regulatory protections that "relate to the safety, health, morals and general welfare of the public". *Lochner v. New York*, 198 U.S. 45, 53, 25 S. Ct. 539, 541, 1905 U.S. LEXIS 1153, *13-14 (1905). *See PPM Atlantic Renewable v. Fayette County Zoning Hearing Board*, 93 A.3d 536, 2014 Pa. Commw. Unpub. LEXIS 311 (Pa. Commw. Ct. 2014) (allowing more lax height and setback requirements for "participants" compared to "non-participants" in a wind project project is an improper restriction on health, safety and welfare protections). Where "[t]here is no provision for review under the ordinance" and the neighbors' determination as to land uses in the areas "is final . . . [and t]hey are not bound by any official duty, but are free to [act] for selfish reasons or arbitrarily and may subject [their neighbor] to their will or caprice", . . . [t]he delegation of power so attempted is repugnant to the due process clause of the Fourteenth Amendment." *Washington ex rel. Seattle Title Trust Co. v. Roberge*, 278 U.S. 116, 122, 49 S. Ct. 50, 51, LEXIS 7, *8 (1928) 122, 214, 8 (citing *Yick Wo v. Hopkins*, 118 U.S. 356, 366, 368; *Eubank v. Richmond*, 226 U.S. 137, 143 (1912); *Browning v. Hooper*, 269 U.S. 396 (1926). *See also Eastlake v. Forest City Ents., Inc.*, 426 U.S. 668, 677, 96 S.Ct. 2358 (1976) (it is unconstitutional for a city to delegate its "legislative power, originally given by the people to a legislative body, . . . to a narrow segment of the community, not to the people at large"); *Kenney v. Blackwell*, No. 99-3975, 2000 U.S. App. LEXIS 16205 (unpub. 6th Cir. 2000) (discussing the delegation doctrine).

43 *Eubank v. City of Richmond*, 226 U.S. 137, 143-144, (where an ordinance allows "[o]ne set of owners [to] determine not only the extent of use but the kind of use which another set of owners may make of their property . . . [,] conferring the power on some property holders to virtually control and dispose of the proper rights of others, [with] no standard by which the power thus given is to be exercised . . . , the property holders who desire and have the authority to establish the line may do so solely for their own interest or even capriciously.").

44 Executive Order on Wind Projects, § 2(a).

45 *Id.*

46 Executive Order on Energy, § 7.

47 *Id.*, § 2(i).

Message

From: Alan Roberson [aroberson@asdwa.org]
Sent: 2/10/2025 8:29:20 PM
To: Zeldin, Lee [Zeldin.Lee@epa.gov]
CC: Voyles, Travis [voyles.travis@epa.gov]; Hope, Brian [Hope.Brian@epa.gov]; Carpenter, Wesley [Carpenter.Wesley@epa.gov]; Amidon, Eric [Amidon.Eric@epa.gov]; McIntosh, Chad [mcintosh.chad@epa.gov]; Best-Wong, Benita [Best-Wong.Benita@epa.gov]; McLain, Jennifer L. [McLain.Jennifer@epa.gov]
Subject: ASDWA Letter Requesting Consistency in Federal Funding
Attachments: Zeldin_Letter_Maintaining_Funding_Final_02102025.pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Good Afternoon Administrator Zeldin, enclosed is a letter from the Association of State Drinking Water Administrators (ASDWA), emphasizing the need to maintain federal funding for infrastructure construction and for all environmental programs. If you have any questions about this letter or would like to learn more about the cooperative federalism work between ASDWA's members and EPA, please feel free to contact me. Thanks. Alan

J. Alan Roberson, P.E.
Executive Director
Association of State Drinking Water Administrators (ASDWA)
Currently working both in the office and remotely
Direct - (703) 812-9507
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Email: aroberson@asdwa.org

Twitter @AlanTheWaterMan

asdwa

Association of State
Drinking Water Administrators

February 10, 2025

Mr. Lee Zeldin, Administrator
Environmental Protection Agency

Re: Maintaining Federal Funding for All Environmental Programs

Dear Administrator Zeldin,

The Association of State Drinking Water Administrators (ASDWA) is the professional association that serves as the national voice for the 57 state, territorial, and tribal drinking water programs. ASDWA's members partner with EPA in implementing the Safe Drinking Water Act (SDWA), providing safe drinking water, and improving public health protection every day. This partnership embodies cooperative federalism by sharing power between the federal and state governments. Both levels must work together to effectively implement the SDWA.

Given the role that safe drinking water plays in everyday life and in public health protection, having effective state, territorial, and tribal drinking water programs across the country is critical. Even after the "release" of the funding after the previous funding freeze, confusion remains surrounding the federal funding that impacts all state, territorial, and tribal environmental programs. These programs need to regularly access the EPA funding system Automated Standard Application for Payments (ASAP) to maintain continuity of operations. Many drinking water programs fund a sizable portion of their staff through the Drinking Water State Revolving Fund (DWSRF) set-asides. As a partner with EPA, state programs need assurances that this critical funding remains available on a continuous basis.

With the back-and-forth of the funding last week, agencies are spending time working on contingency plans to stop infrastructure construction projects and to potentially lay off staff that oversee these projects, as well as other SDWA implementation activities. There is a massive amount of ongoing infrastructure projects that are in progress across the country. Many construction projects have funding commitments from the States that would be paid for by the previously the "frozen" funding. Currently, the states need certainty that they will be able to pay the contractors with active construction. Future freezes or uncertainty with federal funding means that communities, homeowner associations (HOAs), etc., would be unable to continue working on these infrastructure projects or pay their contractors. Then the inability to pay would trickle down from there, to the tune of billions of dollars.

Over the past two weeks states have had to develop contingency plans on how to pay staff that manage the SDWA implementation activities. That contingency would equate to a stop work order on all contracts, i.e., now impacting other private sector businesses. That approach would only last for so long and then states will have to furlough or lay-off staff. At some point down the road in this scenario, there is no infrastructure construction or SDWA implementation. The timing for this scenario would be short.

ASDWA recommends that EPA and the Office of Management and Budget (OMB) provide consistency for the funding for these critical state, territorial, and environmental programs. These programs must be able to consistently access every source of funding to do their jobs. Any further funding delays put the provision of safe drinking water and environmental protection across the country at risk.

ASDWA looks forward to working with the new Administration and offering our assistance as the transition team moves forward in tackling our critical drinking water and environmental issues.

Sincerely,

J. Alan Roberson

J. Alan Roberson, P.E.
Executive Director

Cc: Travis Voyles – EPA
Brian Hope – EPA
Wesley Carpenter – EPA
Eric Amidon - EPA
Chad McIntosh – EPA
Benita Best-Wong – EPA OW
Jennifer McLain – EPA OGWDW

Message

From: McIntosh, Chad [mcintosh.chad@epa.gov]
Sent: 3/11/2025 10:21:45 PM
To: Bafford, Beth [BBafford@climateunited.org]
CC: GGRFoversight [GGRFoversight@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]; Molina, Michael [molina.michael@epa.gov]; Zavala, Julie [Zavala.Julie@epa.gov]; Amidon, Eric [Amidon.Eric@epa.gov]
Subject: Notice of Termination
Attachments: 2025.03.11 EPA Notice of Termination Climate United Fund - CUF.pdf

Please see attached. Thank you.

Chad McIntosh, P.E.
Acting Deputy Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
3412 WJC-North | Mail Code 1102
Washington, DC 20004
Tel. No. (202) 787-0580
mcintosh.chad@epa.gov

U.S. Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Washington, DC 20460

March 11, 2025

By Email

Elizabeth Bafford
CEO
Climate United Fund
7550 Wisconsin Ave, 3rd floor
Bethesda, MD 20814
BBafford@climateunited.org

Re: Notice of Termination

Dear Elizabeth Bafford,

Pursuant to the U.S. Environmental Protection Agency's ("EPA" or "the Agency") authority under 2 C.F.R. §§ 200.339-40, the General Terms and Conditions of EPA assistance award agreements, the terms and conditions of the Grant Agreement, and the Agency's inherent authority to reconsider prior determinations in light of new information, the Agency is terminating Grant Agreement No. 84094001, awarded to Climate United Fund under the Greenhouse Gas Reduction Fund ("GGRF"), effective immediately. This termination is based on substantial concerns regarding program integrity, the award process, programmatic fraud, waste, and abuse, and misalignment with the Agency's priorities, which collectively undermine the fundamental goals and statutory objectives of the award.

Following a comprehensive review and consistent with multiple ongoing independent federal investigations into programmatic fraud, waste, abuse and conflicts of interest, EPA has identified material deficiencies, including, but not limited to: 1) the absence of adequate oversight and account controls to prevent financial mismanagement; 2) the improper or speculative allocation of funds inconsistent with EPA's oversight and fiscal responsibilities; and 3) the circumvention and defeat of key oversight mechanisms in the disbursement of federal funds. EPA has determined that these deficiencies pose an unacceptable risk to the efficient and lawful execution of this grant that cannot be remedied by imposing specific conditions, necessitating immediate termination to safeguard taxpayer funds and ensure compliance with federal financial assistance regulations.

Additionally, the Agency has considered concerns raised by EPA Administrator Lee Zeldin regarding the need for rigorous oversight and accountability in the administration of public funds. The Administrator has emphasized the importance of eliminating fraud, waste, and abuse within EPA, particularly in high-value awards such as those under GGRF. The structural and operational weaknesses identified in the execution of this grant are inconsistent with these priorities and materially impair the EPA's ability to ensure compliance with statutory and regulatory mandates governing the lawful expenditure of public money.

The Agency has also determined that its existing process for awarding and overseeing execution of the Grant Agreement lacks sufficient protections to guard against potential violations of the Constitution, particularly the Appointments Clause and private nondelegation doctrine. U.S. Const. art. II, § 2, cl. 2; *e.g., Alpine Sec. Corp. v. FINRA*, 121 F.4th 1314, 1341 (D.C. Cir. 2024). Consistent with its independent duty to avoid exceeding constitutional constraints, EPA has reconsidered the prior administration's conclusion that the oversight mechanisms for the Grant Agreement are sufficient to ensure that the Recipient will not exercise significant authority independently of EPA's oversight and ultimate approval.

This termination is executed in accordance with Sections III.S and III.T.4 of the Grant Agreement and with EPA's General Terms and Conditions as incorporated in, and applicable in addition to, the terms of the Grant Agreement, and is consistent with EPA's obligations to safeguard public funds and inherent authority to reconsider prior decisions. This letter constitutes the notice of termination required by 2 C.F.R. § 200.341. Consistent with 2 C.F.R. §§ 200.344-45 and the Closeout Agreement, the recipient is required to cease all further program expenditures immediately, provide a comprehensive final financial and programmatic report, and comply with all applicable closeout procedures.

EPA is committed to ensuring that federal funding is administered in a manner that upholds transparency, accountability, and the highest standards of fiscal responsibility. This termination reflects the Agency's duty to protect public funds and maintain the integrity of its grant programs. In the coming months, EPA will work to re-obligate lawfully appropriated funds within the GGRF program with enhanced controls to ensure adequate governance, transparency, and accountability, consistent with applicable regulatory and statutory requirements.

Sincerely,

W. C. McIntosh

W.C. McIntosh
Acting Deputy Administrator
U.S. Environmental Protection Agency

cc:

- U.S. EPA, Office of the Greenhouse Gas Reduction Fund (OGGRF)
- U.S. EPA, Office of Mission Support (OMS)
- U.S. EPA, Office of General Counsel (OGC)
- U.S. Department of Justice
- U.S. Department of the Treasury
- U.S. House of Representatives
- U.S. Senate
- Citibank, N.A.