

SUPPLEMENTAL DECLARATION OF MARGO OGE

I, Margo Oge, declare as follows:

1. I am aware that, on May 3, 2019, EPA filed a cross-motion for summary judgment and an opposition to the Plaintiffs' motion for summary judgment in the litigation over the FOIA request submitted by Environmental Defense Fund and Natural Resources Defense Council, seeking the current version of the OMEGA model. I have reviewed EPA's brief and the accompanying declarations of William Wehrum and William Charnley. Several of the statements in EPA's brief and in Mr. Wehrum's declaration, in particular, are not reflective of my experiences with the development and public release of four of the five OMEGA versions affirmatively published by the agency.

2. As I previously stated, from 1994 until my retirement in 2012, I served as the Director of the Office of Transportation and Air Quality ("OTAQ") of the Environmental Protection Agency ("EPA"). During my tenure, I authorized OTAQ technical staff to develop the OMEGA model. As mentioned in my previous declaration, I was not involved with the technical details and underpinnings of the OMEGA model. Based on my best recollection, when OTAQ staff briefed me on the results of various OMEGA iterations, the then-Assistant Administrator of the Office of Air and Radiation was not present.

3. Current EPA Assistant Administrator William Wehrum states in paragraph 11 of his declaration that "upper-level decisionmakers may work with technical staff on a longer timeline to make more substantive analytical changes to the core model." During my tenure as director of OTAQ, neither I nor the Assistant Administrator ever worked with technical staff to make "substantive analytical changes" to the core model. There were no "analytical choices internal to the OMEGA model itself made by ... policymakers," as Mr. Wehrum contends in

paragraph 12 of his declaration. The construction and modification of the core model was a task delegated entirely to OTAQ technical experts. OMEGA is an objective computational tool, so there was no reason for policymakers to be involved in its development.

EPA's Maintenance and Use of the OMEGA Model

4. The staff at OTAQ update or oversee updates to various components of the OMEGA model. OTAQ staff update the OMEGA model based on developments in the automotive sector, such as the creation and implementation of new technologies that the model accounts for. During my tenure as director of OTAQ, adjustments to the various components of OMEGA, including the core executable model, were not reviewed or approved by me or upper-level management at EPA.

5. The core executable model, which can be revised by changing its source code, was maintained and updated by OTAQ staff, or by contractors at the direction of OTAQ staff. When staff or contractors produced a new, functional version of the core executable model, they would assign a new version number to the core OMEGA model. When a new version was created, that version was as "final" until the next revision. There was no "give-and-take" consultation about the core model like that referenced in EPA's brief and Mr. Wehrum's declaration.

6. Although OTAQ staff regularly update different components of the OMEGA model, that does not render each version a "draft." When staff update the source code and produce a new executable edition of the core model, and apply a version number to that new model, that simply indicates that a version of the model is current and functional.

7. During my tenure as the director of OTAQ, I reviewed descriptions of the *results* of running the OMEGA model. As I stated previously: "*After* conducting model runs, EPA

employees would analyze the raw outputs of the model, decide on the key takeaways, and summarize selected model results in decision memos and briefings for policymakers.” OTAQ staff never briefed me or presented me with the actual core model or other technical components of the OMEGA model. I also am not aware of any policymaker or EPA staff outside of OTAQ who ever had occasion to review or comment on the core model.

8. I do not agree with Mr. Wehrum’s statement in paragraph 12 of his declaration that “the policy choices made throughout the regulatory development process are inextricably tied to the analytical choices internal to the OMEGA model itself made by those same policymakers.” First, the agency policymakers—the officials making decisions about regulatory development—did not make any decisions about the internal workings of the OMEGA model. As the Director of OTAQ, I did not use the OMEGA model, and I did not edit or alter or review the various components of the model. I did not have the core executable model installed on my computer, much less try to understand its mechanics. Second, I agree with Dr. Nicholas Lutsey that the OMEGA model itself does not make “analytical choices”—it is merely a “specialized calculator” that performs computations and produces data for use in future analysis.

9. I do not agree with Mr. Wehrum’s statement in paragraph 19 of his declaration that the fact whether the agency included a specific “analytical tool” in the OMEGA model, and “the outlines and parameters of any such hypothetical tool,” would in some way “reveal EPA’s pre-decisional thinking.” These statements are a mischaracterization of the OMEGA model, which is an objective computational tool.

EPA’s Releases of OMEGA

10. I was the Director of OTAQ when four of the five public versions of OMEGA were published. The first public version of the OMEGA model was released in 2009, and the

fourth public version was released in August 2012. During my tenure at EPA, there was no formal or informal policy to only release the OMEGA model when “the regulatory development process has become similarly final,” as Mr. Wehrum asserts in paragraph 13 of his declaration.

11. Rather, to be transparent, EPA would post on its website the current version of the OMEGA model when it was most likely that public stakeholders would utilize the model—for example, to inform public comments on a proposal—and EPA staff were empowered to share information about the model with stakeholders at all other times. There was also no process for scrubbing the OMEGA core model to prepare it for public release, or any approval process for the OMEGA model like the one referenced in paragraph 15 of Mr. Charmley’s declaration. Staff of OTAQ did not ask my permission to release the various versions of the OMEGA model.

12. In fact, the OMEGA model—including the core model at issue here—was published in conjunction with the *proposed* versions of the light-duty Phase 1 and Phase 2 rules, in order to invite public input and review. These versions explicitly were not “final” versions of OMEGA used to inform final agency decisions. Similarly, EPA identified the version of the OMEGA model that was released in 2016, version 1.4.56, as the “Draft TAR version” because it was published in conjunction with EPA’s Draft Technical Assessment Report.¹

13. As Dr. Nicholas Lutsey states in paragraph 27 of his declaration: “Based on information published in the current rulemaking docket, it appears that EPA staff ran the updated OMEGA model to estimate the impact of altering the MY 2021-2025 standards, and presented this estimate to the Office of Management and Budget.” Mr. Charmley acknowledges this in paragraph 19 of his declaration. I do not agree, however, with Mr. Charmley’s suggestion in

¹ EPA, Draft Technical Assessment Report: Mid-Term Evaluation of Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards for Model Years 2022-2025: Appendix C at C-1, EPA-420-D-16-900app (July 2016).

paragraphs 20 and 21 of his declaration that a version of the OMEGA model used by EPA staff to produce results that are shared outside the agency for “illustrative purposes” would not be considered a “complete” version of the model. In my experience, EPA would not present the results produced by a version of the OMEGA model if it did not consider that model to be materially complete.

14. I disagree with Mr. Wehrum’s statement in paragraph 21 of his declaration that the release of the OMEGA model would “chill free and open discussions of EPA staff regarding their opinions on the appropriate analytical tools to be included in the model.” As I previously stated, “[a]s OTAQ Director, I was never concerned about disclosure of the OMEGA model to the public harming the agency or its deliberative process. To the contrary, I expected that the model and the files needed to use it would continue to be released to the public, so that the model could continue to be refined using public comments.”

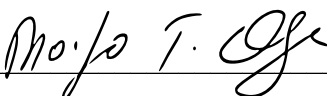
15. OTAQ staff and contractors never expressed any concern to me about release of OMEGA model versions chilling their development or discussion of the model. Everyone was aware that any new versions of OMEGA could be made available to the public for review and comment.² The release of the OMEGA model did not “chill free and open discussions of EPA staff regarding their opinions on the appropriate analytical tools to be included in the model.” In fact, the opposite happened. The transparency brought input from stakeholders that helped refine the model. These interactions contributed to public buy-in and support for the final greenhouse gas emission standards for model year 2012-2016 and 2017-2025 light-duty vehicles, across the stakeholders.

² See *OMEGA Core Model Version 1.4.56*, at 3, Doc. EPA-420-B-16-064 (July 2016).

16. During my tenure at EPA, OTAQ staff were permitted to communicate with the public about OMEGA and share information and components of the model beyond the releases of the OMEGA on the EPA website. I have reviewed email exchanges that occurred after my tenure as director of OTAQ, which indicate that this practice continued. *See Exhibit A.* In July and August 2016, during EPA's Mid-Term Evaluation of the light-duty vehicle greenhouse gas emission standards for model years 2022-2025, OTAQ staff communicated by email with stakeholders—including staff at the Auto Alliance, a major auto industry trade group—about the OMEGA model and its inputs. *See id.* In these informal communications, OTAQ staff shared insights and additional information about OMEGA, demonstrating the agency's commitment to and practice of transparency.

17. I have also reviewed a presentation given by Michael Olechiw, the Director of the Light-Duty Vehicle and Small Engine Center within OTAQ at EPA, to the Society of Automotive Engineers on January 25, 2018, where Mr. Olechiw described public comments on the OMEGA model (in particular, the ALPHA model, which is one of EPA's tools that generates inputs for the OMEGA model) and explained how OTAQ staff are working to respond to that feedback to improve the modeling tools. *See Exhibit B.* The practice of publicly sharing information with industry experts demonstrates the agency's commitment to and practice of transparency.

I declare under penalty of perjury that the foregoing is true and correct.



Margo Oge

Dated May 12, 2019