UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

NOV 15 2017

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving Bucks County, Pennsylvania

FROM: Kevin S. Minoli KSM
Designated Agency Ethics Official and
Acting General Counsel

TO: Cosmo Servidio
Regional Administrator
Region III

You were recently appointed as the Regional Administrator for the United States Environmental Protection Agency (EPA) Region III and seek permission to participate in specific party matters involving Bucks County, Pennsylvania. Within the last year, prior to being selected for this position, you served as director of environmental affairs for the Bucks County Water & Sewer Authority (BCWSA), created by Bucks County under the Pennsylvania Municipality Authorities Act, 53 Pa. C. S. § 5601 *et. seq*.

Under President Trump's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, local government is excluded under the definition of "former employer."[1] Therefore, the Ethics Pledge does not apply to your Bucks County employment. But since federal ethics rules do not contain a similar exclusion for local governments, those rules do apply to your employment with BCWSA, created by Bucks County.

Thus, what remains is an impartiality concern. The applicable ethics rules are set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Upon assuming the position of Regional Administrator, you will have a "covered relationship" with BCWSA and, by extension, Bucks County, Pennsylvania pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the time you resign from the BCWSA, absent an impartiality determination from me, you

[1] *See* Exec. Order 13770, Section 2(j), which provides that "'former employer' does not include … State or local government."

cannot participate in any specific party matter in which BCWSA or Bucks County is a party or represents a party if that matter is likely to have a direct and predictable effect upon the BCWSA or County or if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

(1) the nature of the relationship involved;
(2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
(3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
(4) the sensitivity of the matter;
(5) the difficulty of reassigning the matter to another employee; and
(6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

As Regional Administrator, you are the leader of your Region and part of the Agency's political team. You may be asked to participate in discussions and meetings related to particular matters that affect BCWSA or Bucks County, Pennsylvania. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Regional Administrator in particular matters that involve BCWSA or Bucks County with the following limitation: You must recuse yourself from participation in EPA specific party matters if you participated personally and substantially in the same specific party matters while employed with the BCWSA. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – For the past year, you have served as the director of environmental affairs for the BCWSA, which is one of the largest water and sewer authorities in the Commonwealth of Pennsylvania. In this significant leadership role, you oversaw operations and facility planning to help identify needed improvements to maintain essential water and wastewater services. You also provided oversight to ensure utilities comply with all state and federal requirements. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for the BCWSA, especially those related to BCWSA's compliance with state and federal requirements. Additionally, your employment during the previous year was with a local municipal authority, rather than with the state environmental agency. But States and local governments share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its

regions, works closely and directly with states and local governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I have concluded that there is no possibility that any of EPA's actions will affect your own financial interests or those interests imputed to you under the financial and impartiality rules. *See* 18 U.S.C. § 208 and 5 C.F.R. § 2635.502.

Nature and importance of the employee's role – As the leader of Region III, you oversee environmental protection efforts in Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and the District of Columbia. In your role as Regional Administrator, you are expected to communicate freely with these states and their local governmental entities.

Sensitivity of the matter – There may be specific party matters in which you did not participate personally and substantially for BCWSA or Bucks County that will rise to your level of attention. These matters may merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Regional Administrator in such matters will be of importance to the Administrator, and therefore, in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve BCWSA or Bucks County, but not on the very same specific party matters on which you worked while employed by the BCWSA. This "cooling off" period with BCWSA and Bucks County will last for one year from the date you left BCWSA. If the Agency determines that we have a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you or your Deputy Regional Administrator or Regional Counsel may ask OGC/Ethics to reconsider the factors and information listed above on a case-by-case basis along with additional relevant details before determining whether to authorize your participation. You must continue to recuse yourself from these matters unless OGC/Ethics determines that the Agency's interest in your participation outweighs any impartiality concern and authorizes you to participate.

While I have issued you this determination to interact with BCWSA or Bucks County on new or future specific party matters, except for any of the same specific party matters on which you participated in personally and substantially while with the BCWSA, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves BCWSA or Bucks County. Nothing in this impartiality determination should preclude you from choosing to recuse yourself altogether. For example, due to your previous employment with the Pennsylvania Department of Environmental Protection (PADEP) and your PADEP-related work on an EPA specific party matter involving the BCWSA, you have voluntarily agreed not to work on this specific party matter during your tenure at EPA.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786, or any member of your regional ethics team.

cc: Cecil A. Rodrigues, Deputy Regional Administrator, Region III
Mary Coe, Regional Counsel, Region III
Deane Bartlett, Regional Ethics Counsel, Region III
Justina Fugh, Senior Counsel for Ethics