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

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

AUG 16 2017

SUBJECT: Request for a Limited Waiver from Section 1, Paragraph 7 of Executive Order 13770

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

THROUGH: Ryan Jackson
Chief of Staff

TO: Donald F. McGahn II
Counsel to the President
The White House

This memorandum requests a limited waiver from Section 1, paragraph 7 of Executive Order 13770 (January 28, 2017) for Erik Baptist, Senior Deputy General Counsel in the Office of General Counsel at the United States Environmental Protection Agency (EPA). Prior to his appointment as a non-career SES employee, Mr. Baptist was Senior Counsel at the American Petroleum Institute (API). In that capacity, he provided legal services and, until March 31, 2016, was also listed as a federally registered lobbyist for the API,[1] focusing on the Renewable Fuel Standards program (RFS).[2] Mr. Baptist began service at EPA on June 18, 2017 and received initial ethics training on June 23, 2017.

EPA requests this limited waiver to allow him to advise the Administrator and other senior officials on the annual renewable fuel standards and, in general, the RFS program. His expertise and comprehensive understanding of the challenges and nuances of the RFS program are needed to counsel and advise the Administrator and senior leadership in this critical area.

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[1] As an attorney within the API's Office of General Counsel, Mr. Baptist was not an employee of the API's Federal Relations department, where the API's in-house lobbyists reside.

[2] The RFS program is a national policy that requires a certain volume of renewable fuel to replace or reduce the quantity of petroleum-based transporting fuel, heating oil or jet fuel. It was created under the Energy Policy Act of 2005 (Pub. L. 109-58), which amended the Clean Air Act (CAA), 42 U.S.C. § 7401 *et seq.* The Energy Independence and Security Act of 2007 (Pub. L. 110-140) further amended the CAA by expanding the RFS program.

BACKGROUND

On January 28, 2017, President Trump signed Executive Order 13770, "Ethics Commitments by Executive Branch Appointees." All individuals appointed to political positions on or after January 20, 2017 are required to sign the ethics pledge, which sets forth the lobbying restriction at Section 1, paragraph 7:

> *If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 6, I will not for a period of 2 years after the date of my appointment participate in any particular matter on which I lobbied within the 2 years before the date of my appointment or participate in the specific issue area in which that particular matter falls.*

Mr. Baptist signed the ethics pledge on June 28, 2017. Because he had been a federally registered lobbyist for the API within the preceding two years, he requires a waiver to work on the Renewable Fuels Standards program in his current EPA position. Section 3 of Executive Order 13770 allows the President or his designee to grant a waiver of any restriction contained in the Ethics Pledge.

MR. BAPTIST'S UNIQUE EXPERTISE

A graduate of Vanderbilt University and the George Washington University Law School, Mr. Baptist has worked for the international law firm McDermott Will & Emery LLP and served as an attorney for the Division of Investigations in the Office of Enforcement for the Federal Energy Regulatory Commission (FERC). While at FERC, he led a market-wide investigation of energy companies relating to the reliability of the electric grid and also investigated an energy company for multiple violations of federal energy laws and regulations. He personally worked on the investigation of the Amaranth hedge fund and trial of its head trader, who was found to have manipulated the price of natural gas through futures trading.

While at the API, Mr. Baptist provided direct litigation support and legal advocacy on critical issues facing the oil and gas industry, including matters related to fuel specifications and market development of natural gas. In his role as Senior Counsel, he helped to develop consensus with affected constituencies to build broad coalitions in support of legislation or regulatory reform. As an expert in his field, Mr. Baptist has taught continuing legal education courses on the topics of fuel regulations before the American Law Institute Continuing Legal Education (ALI CLE) and the RFS program before the District of Columbia Bar Association.

The EPA Administrator needs to be able to utilize Mr. Baptist's subject-matter expertise in the Renewable Fuel Standards program, and the perspective that he gained working with the API and its member organizations. Because the EPA does not yet have a confirmed General Counsel, Mr. Baptist is currently the most senior political appointee in the Office of General Counsel, thus serving a critical role as a primary legal advisor to the Administrator. In his position, he must be able to provide legal counsel to the EPA's top policy-makers and provide

his unique expertise and vital input into Agency rules and regulations. His invaluable knowledge and experience will assist the Administrator and the Agency with respect to an important program in the Office of Air and Radiation, which also currently lacks a political leader.

REQUEST FOR A LIMITED WAIVER

In deciding to request this limited waiver, the EPA has carefully considered a number of factors:

- At the time Mr. Baptist joined the EPA, he was not a federally registered lobbyist. The API formally removed him as a lobbyist on its lobbying disclosure form filed in the first quarter of 2016;

- Mr. Baptist triggered the relatively low threshold to register as a federal lobbyist because as an attorney within the API's Office of General Counsel he provided legal oversight of the API's numerous advocacy activities on the Renewable Fuel Standards program. Mr. Baptist was not an employee of the API's lobbying department;

- The Clean Air Act requires the EPA to issue new renewable fuel percentage standards each year, and Mr. Baptist worked on lobbying activities related to these renewable fuel percentage annual standards. Despite the fact that this regulatory standard is changed annually, the EPA is advised by the Office of Government Ethics that it nevertheless technically falls within the scope of a "specific issue area" as set forth at Section 1, paragraph 7 and requires a waiver;

- Unless and until this limited waiver is granted, Mr. Baptist has recused himself from working on the renewable fuel standards and the RFS program. Granting this limited waiver to allow him to utilize his extensive knowledge and experience in the RFS program will not alter his existing recusal obligations under Section 1, paragraph 6 regarding the API as his former employer; and

- Although Mr. Baptist is listed on the API lobbying disclosure forms for a variety of issues, the EPA seeks this limited waiver only for the Renewable Fuel Standards program.

CONCLUSION

For the reasons set forth above, EPA respectfully requests a limited waiver of the provisions of Section 1, paragraph 7 of the Executive Order to enable Erik Baptist to effectively carry out his duties as Senior Deputy General Counsel and advise the EPA Administrator on the Renewable Fuel Standards program. He will otherwise fully comply with the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations, as well as his own attorney bar obligations. In particular, as noted above, Mr.

Baptist will remain restricted by the Executive Order, Section 1, paragraph 6, from participating in any particular matter involving specific parties that is directly and substantially related to his former employer, the API.

Please feel free to contact the EPA Chief of Staff, Ryan Jackson, at (202) 564-4700 or Jackson.Ryan@epa.gov or me at (202) 564-8040 or Minoli.Kevin@epa.gov if you have any questions.

MEMORANDUM

TO: KEVIN S. MINOLI
ACTING GENERAL COUNSEL AND
DESIGNATED AGENCY ETHICS OFFICIAL
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

FROM: DONALD F. MCGAHN II
COUNSEL TO THE PRESIDENT
THE WHITE HOUSE

DATE: August 25, 2017

SUBJECT: Limited Waiver of Section 1, Paragraph 7 of Executive Order 13770

Official: Erik Baptist
Senior Deputy General Counsel
United States Environmental Protection Agency

After reviewing your limited waiver request memorandum, I hereby waive the requirements of Section 1, paragraph 7 of Executive Order 13770 to Mr. Erik Baptist to allow him to advise the Administrator of the United States Environmental Protection Agency and other senior Agency officials with respect to the Renewable Fuels Standards program and regulations. I have determined that it is in the public interest to grant this limited waiver because of Mr. Baptist's expertise in this program and its policy and implementation. The facts that Mr. Baptist had not been a registered lobbyist for fourteen months prior to his appointment and signing the Ethics Pledge and that the activities that triggered his obligation to register as a lobbyist were limited, coupled with his deep understanding of the RFS program and the regulated industry, make him an ideal person to assist the Administrator and his senior leadership team to make EPA and its renewable fuel programs more efficient and effective.

In light of the importance of the aforementioned efforts to the Trump Administration and to the United States Environmental Protection Agency, a limited waiver of the provisions of paragraph 7 of the Ethics Pledge (contained in Section 1 of Executive Order 13770) is justified for Mr. Baptist so that he can ably advise the EPA Administrator. Accordingly, I authorize Erik Baptist to participate personally and substantially in matters regarding the Renewable Fuel Standards program. I understand that he will otherwise fully comply with the remainder of the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations, as well as his own attorney bar obligations.

Dated: 25 August 2017

Donald F. McGahn II
Counsel to the President

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

SEP 29 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Limited Waiver Issued under Executive Order 13770 for Erik Baptist

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

TO: E. Scott Pruitt
Administrator

As you know, Executive Order 13770 (January 28, 2017) requires that every full-time political appointee sign an Ethics Pledge that sets forth additional ethics requirements. Waivers to the Pledge may be issued by the President or his designee. Any waivers issued pursuant to this Executive Order 13770 must be provided to the head of the Agency in which the person serves or has been appointed to serve. *See* the Office of Government Ethics Program Advisory entitled "Posting of Waivers Issued under Executive Order 13770," PA-17-05 (September 21, 2017).

Attached for your reference is a copy of EPA's request for a limited waiver of Section 1, Paragraph 7 of Executive Order 13770 for Erik Baptist, Senior Deputy General Counsel, and a copy of the limited waiver signed by the Counsel to the President on August 25, 2017. This limited waiver allows Erik Baptist to participate personally and substantially in matters regarding the Renewable Fuels Standard program.

Please feel free to contact me at (202) 564-8040 if you have any questions.

Attachments

cc: Ryan Jackson, Chief of Staff
Justina Fugh, Senior Counsel for Ethics

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

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

AUG 16 2017

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The EPA Administrator needs to be able to utilize Mr. Baptist's subject-matter expertise in the Renewable Fuel Standards program, and the perspective that he gained working with the API and its member organizations. Because the EPA does not yet have a confirmed General Counsel, Mr. Baptist is currently the most senior political appointee in the Office of General Counsel, thus serving a critical role as a primary legal advisor to the Administrator. In his position, he must be able to provide legal counsel to the EPA's top policy-makers and provide

his unique expertise and vital input into Agency rules and regulations. His invaluable knowledge and experience will assist the Administrator and the Agency with respect to an important program in the Office of Air and Radiation, which also currently lacks a political leader.

REQUEST FOR A LIMITED WAIVER

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- Although Mr. Baptist is listed on the API lobbying disclosure forms for a variety of issues, the EPA seeks this limited waiver only for the Renewable Fuel Standards program.

CONCLUSION

For the reasons set forth above, EPA respectfully requests a limited waiver of the provisions of Section 1, paragraph 7 of the Executive Order to enable Erik Baptist to effectively carry out his duties as Senior Deputy General Counsel and advise the EPA Administrator on the Renewable Fuel Standards program. He will otherwise fully comply with the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations, as well as his own attorney bar obligations. In particular, as noted above, Mr.

Baptist will remain restricted by the Executive Order, Section 1, paragraph 6, from participating in any particular matter involving specific parties that is directly and substantially related to his former employer, the API.

Please feel free to contact the EPA Chief of Staff, Ryan Jackson, at (202) 564-4700 or Jackson.Ryan@epa.gov or me at (202) 564-8040 or Minoli.Kevin@epa.gov if you have any questions.

MEMORANDUM

TO: KEVIN S. MINOLI
ACTING GENERAL COUNSEL AND
DESIGNATED AGENCY ETHICS OFFICIAL
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

FROM: DONALD F. MCGAHN II
COUNSEL TO THE PRESIDENT
THE WHITE HOUSE

DATE: August 25, 2017

SUBJECT: Limited Waiver of Section 1, Paragraph 7 of Executive Order 13770

Official: Erik Baptist
Senior Deputy General Counsel
United States Environmental Protection Agency

After reviewing your limited waiver request memorandum, I hereby waive the requirements of Section 1, paragraph 7 of Executive Order 13770 to Mr. Erik Baptist to allow him to advise the Administrator of the United States Environmental Protection Agency and other senior Agency officials with respect to the Renewable Fuels Standards program and regulations. I have determined that it is in the public interest to grant this limited waiver because of Mr. Baptist's expertise in this program and its policy and implementation. The facts that Mr. Baptist had not been a registered lobbyist for fourteen months prior to his appointment and signing the Ethics Pledge and that the activities that triggered his obligation to register as a lobbyist were limited, coupled with his deep understanding of the RFS program and the regulated industry, make him an ideal person to assist the Administrator and his senior leadership team to make EPA and its renewable fuel programs more efficient and effective.

In light of the importance of the aforementioned efforts to the Trump Administration and to the United States Environmental Protection Agency, a limited waiver of the provisions of paragraph 7 of the Ethics Pledge (contained in Section 1 of Executive Order 13770) is justified for Mr. Baptist so that he can ably advise the EPA Administrator. Accordingly, I authorize Erik Baptist to participate personally and substantially in matters regarding the Renewable Fuel Standards program. I understand that he will otherwise fully comply with the remainder of the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations, as well as his own attorney bar obligations.

Dated: 25 August 2017

Donald F. McGahn II
Counsel to the President

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

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Emergency Request for a Limited Waiver from Section 1, Paragraph 7 of Executive Order 13770

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

THROUGH: Ryan Jackson
Chief of Staff

TO: Donald F. McGahn II
Counsel to the President
The White House

This memorandum requests a limited waiver from Section 1, paragraph 7 of Executive Order 13770 (January 28, 2017) for Dennis "Lee" Forsgren, Deputy Assistant Administrator (DAA), Office of Water (OW), at the United States Environmental Protection Agency (EPA), to allow him to participate in EPA's efforts to respond to the impacts of Hurricane Irma. Prior to his appointment at EPA, Mr. Forsgren represented the Miccosukee Tribe of Indians on three different periods of time since 2000, including from 2016 until his appointment. The Miccosukee Tribe is a federally-recognized Indian Tribe whose reservation lands are in Broward and Miami-Dade Counties in Florida. He was listed as a federally registered lobbyist for his representation of the Tribe during the period of time that ended with his appointment at EPA, triggering certain recusal obligations for matters involving the Tribe under Section 1, Paragraph 7 of Executive Order 13770.

EPA requests this limited waiver to allow Mr. Forsgren participate fully and without limitation in EPA's response to the range of environmental and human health impacts related to Hurricane Irma. Specifically, when done as part of his participation in EPA's Hurricane Irma response effort, the waiver would enable Mr. Forsgren to engage with the Miccosukee Tribe and its representatives, advise the Administrator and other senior officials on matters related to the Tribe and its Reservation, and participate in decision-making that is related to the Tribe and its Reservation. A significant focus of the agency's response effort is providing services and support to state, local, and tribal governments, and the Miccosukee Tribe is and will be a government the EPA needs to be able to engage with freely and without restriction for this purpose. Because of Mr. Forsgren's understanding of and relationships with the Tribal Government and his position

as the senior appointee in the agency's Office of Water, Mr. Forsgren is uniquely positioned to help EPA achieve its mission in this emergency situation.

BACKGROUND

On January 28, 2017, President Trump signed Executive Order 13770, "Ethics Commitments by Executive Branch Appointees." All individuals appointed to political positions on or after January 20, 2017 are required to sign the ethics pledge, which sets forth the lobbying restriction at Section 1, paragraph 7:

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Mr. Forsgren signed the ethics pledge and has been acting consistent with its requirements since his appointment. Because he had been a federally registered lobbyist for Miccosukee Tribe within the preceding two years, he requires a waiver to work on the part of EPA's response to Hurricane Irma that will inevitably be specific to the Tribe. Section 3 of Executive Order 13770 allows the President or his designee to grant a waiver of any restriction contained in the Ethics Pledge.

MR. FORSGREN'S UNIQUE EXPERTISE AS IT RELATES TO EPA'S RESPONSE TO HURRICANE IRMA

Mr. Forsgren represented the Miccosukee Tribe from 2000-2003, 2005-2012, and most recently 2016 until his appointment to EPA in June 2017. In that role, he represented the Tribe on Everglades restoration, Army Corps projects that impact the Tribe in the Everglades, and Water quality issues impacting the Everglades. Through that representation he developed an understanding of the Tribe and its Reservation that is unmatched at EPA. He also developed a personal relationship with many Tribal leaders that would make him uniquely effective at communicating with them during an emergency situation, if necessary. Finally, he also gained a thorough understanding of how the Tribe and its Reservation are impacted by the water levels in its lands and surrounding areas such as the Everglades.

Because of its location within the southern reaches of Florida, the Miccosukee Reservation will almost certainly be impacted in a significant and adverse way by the wind, rain, and subsequent flooding attributable to Hurricane Irma. With wide-spread life-threatening impacts predicated across nearly all of the State of Florida, Administrator Pruitt must be able to utilize all of his senior officials in EPA's response to this emergency. That is especially true when one of those senior officials has a level of expertise to bring to the response that addresses an agency need and is not possessed by others. Mr. Forsgren possesses that unique expertise with regard to the Miccosukee Tribe, and his ability to engage with them regarding the response effort

will advance the agency's efforts to provide support and assistance to impacted governments in the most effective and timely manner possible.

REQUEST FOR A LIMITED WAIVER

The EPA is requesting a waiver from Mr. Forsgren's recusal obligations under Section 1, paragraph 7 of the Executive Order that are related to the Miccosukee Tribe and that arise as part of his participation in EPA's response to Hurricane Irma. The waiver would not extend to any other issue that Mr. Forsgren is currently recused from participating in under the Executive Order. In addition, while we are requesting a waiver without an end date in recognition of the amount of time the agency anticipates it will be engaged in response efforts, the waiver's limited substantive scope ultimately will also serve as a limitation on the duration of the waiver as well.

CONCLUSION

For the reasons set forth above, EPA respectfully requests a limited waiver of the provisions of Section 1, paragraph 7 of the Executive Order to enable Lee Forsgren to effectively carry out his duties as Deputy Assistant Administrator and advise the EPA Administrator and other senior officials on matters related to the agency's response to Hurricane Irma. He will otherwise fully comply with the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations, as well as his own attorney bar obligations.

Please feel free to contact the EPA Chief of Staff, Ryan Jackson, at (202) 564-4700 or Jackson.Ryan@epa.gov or me at (202) 564-8040 or Minoli.Kevin@epa.gov if you have any questions.

MEMORANDUM

TO: KEVIN S. MINOLI
ACTING GENERAL COUNSEL AND
DESIGNATED AGENCY ETHICS OFFICIAL
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

FROM: DONALD F. MCGAHN II
COUNSEL TO THE PRESIDENT
THE WHITE HOUSE

SUBJECT: Limited Waiver of Section 1, Paragraph 7 of Executive Order 13770

Official: Dennis "Lee" Forsgren
Deputy Assistant Administrator
United States Environmental Protection Agency

After reviewing your limited waiver request memorandum, I hereby waive the requirements of Section 1, paragraph 7 of Executive Order 13770 for Mr. Dennis "Lee" Forsgren that are related to the Miccosukee Tribe and that arise as part of his participation in EPA's response to Hurricane Irma. I have determined that it is in the public interest to grant this limited waiver because of serious threat to life and the environment posed by Hurricane Irma to the Miccosukee Reservation and surrounding areas, and Mr. Forsgren's expertise and experience working with the Miccosukee Tribe. He is an ideal person to engage with the Tribe and assist the Administrator and his senior leadership team to make EPA's response to Hurricane Irma more efficient and effective.

In light of the importance of the aforementioned efforts to the Trump Administration and to the United States Environmental Protection Agency, a limited waiver of the provisions of paragraph 7 of the Ethics Pledge (contained in Section 1 of Executive Order 13770) is justified for Mr. Forsgren so that he can ably advise the EPA Administrator. Accordingly, I authorize Dennis "Lee" Forsgren to participate personally and substantially in matters that arise as part of EPA's response to Hurricane Irma and that regard the Miccosukee Tribe or the Miccosukee Indian Reservation. I understand that he will otherwise fully comply with the remainder of the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations.

Dated: 20 October 2017

Donald F. McGahn II
Counsel to the President

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

DEC 1 1 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Limited Waiver Issued under Executive Order 13770 for Dennis "Lee" Forsgren

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

TO: E. Scott Pruitt
Administrator

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Attached for your reference is a copy of EPA's emergency request for a limited waiver of Section 1, Paragraph 7 of Executive Order 13770 for Dennis "Lee" Forsgren, Deputy Assistant Administrator, Office of Water, and a copy of the limited waiver signed by the Counsel to the President on October 2, 2017. This limited waiver allowed Lee Forsgren to participate personally and substantially in matters that arose as part of EPA's response to Hurricane Irma and that regard the Miccosukee Tribe or the Miccosukee Indian Reservation. Mr. Forsgren previously served as a federally registered lobbyist on behalf of the Tribe. However, this limited waiver was never utilized and EPA now considers the terms of the waiver null and void.

Please feel free to contact me at (202) 564-8040 if you have any questions.

Attachments

cc: Ryan Jackson, Chief of Staff
Justina Fugh, Senior Counsel for Ethics

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

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GENERAL COUNSEL

MEMORANDUM

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EPA requests this limited waiver to allow Mr. Forsgren participate fully and without limitation in EPA's response to the range of environmental and human health impacts related to Hurricane Irma. Specifically, when done as part of his participation in EPA's Hurricane Irma response effort, the waiver would enable Mr. Forsgren to engage with the Miccosukee Tribe and its representatives, advise the Administrator and other senior officials on matters related to the Tribe and its Reservation, and participate in decision-making that is related to the Tribe and its Reservation. A significant focus of the agency's response effort is providing services and support to state, local, and tribal governments, and the Miccosukee Tribe is and will be a government the EPA needs to be able to engage with freely and without restriction for this purpose. Because of Mr. Forsgren's understanding of and relationships with the Tribal Government and his position

as the senior appointee in the agency's Office of Water, Mr. Forsgren is uniquely positioned to help EPA achieve its mission in this emergency situation.

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will advance the agency's efforts to provide support and assistance to impacted governments in the most effective and timely manner possible.

REQUEST FOR A LIMITED WAIVER

The EPA is requesting a waiver from Mr. Forsgren's recusal obligations under Section 1, paragraph 7 of the Executive Order that are related to the Miccosukee Tribe and that arise as part of his participation in EPA's response to Hurricane Irma. The waiver would not extend to any other issue that Mr. Forsgren is currently recused from participating in under the Executive Order. In addition, while we are requesting a waiver without an end date in recognition of the amount of time the agency anticipates it will be engaged in response efforts, the waiver's limited substantive scope ultimately will also serve as a limitation on the duration of the waiver as well.

CONCLUSION

For the reasons set forth above, EPA respectfully requests a limited waiver of the provisions of Section 1, paragraph 7 of the Executive Order to enable Lee Forsgren to effectively carry out his duties as Deputy Assistant Administrator and advise the EPA Administrator and other senior officials on matters related to the agency's response to Hurricane Irma. He will otherwise fully comply with the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations, as well as his own attorney bar obligations.

Please feel free to contact the EPA Chief of Staff, Ryan Jackson, at (202) 564-4700 or Jackson.Ryan@epa.gov or me at (202) 564-8040 or Minoli.Kevin@epa.gov if you have any questions.

MEMORANDUM

TO: KEVIN S. MINOLI
ACTING GENERAL COUNSEL AND
DESIGNATED AGENCY ETHICS OFFICIAL
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

FROM: DONALD F. MCGAHN II
COUNSEL TO THE PRESIDENT
THE WHITE HOUSE

SUBJECT: Limited Waiver of Section 1, Paragraph 7 of Executive Order 13770

Official: Dennis "Lee" Forsgren
Deputy Assistant Administrator
United States Environmental Protection Agency

After reviewing your limited waiver request memorandum, I hereby waive the requirements of Section 1, paragraph 7 of Executive Order 13770 for Mr. Dennis "Lee" Forsgren that are related to the Miccosukee Tribe and that arise as part of his participation in EPA's response to Hurricane Irma. I have determined that it is in the public interest to grant this limited waiver because of serious threat to life and the environment posed by Hurricane Irma to the Miccosukee Reservation and surrounding areas, and Mr. Forsgren's expertise and experience working with the Miccosukee Tribe. He is an ideal person to engage with the Tribe and assist the Administrator and his senior leadership team to make EPA's response to Hurricane Irma more efficient and effective.

In light of the importance of the aforementioned efforts to the Trump Administration and to the United States Environmental Protection Agency, a limited waiver of the provisions of paragraph 7 of the Ethics Pledge (contained in Section 1 of Executive Order 13770) is justified for Mr. Forsgren so that he can ably advise the EPA Administrator. Accordingly, I authorize Dennis "Lee" Forsgren to participate personally and substantially in matters that arise as part of EPA's response to Hurricane Irma and that regard the Miccosukee Tribe or the Miccosukee Indian Reservation. I understand that he will otherwise fully comply with the remainder of the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations.

Dated: 2 October 2017

Donald F. McGahn II
Counsel to the President

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

NOV 15 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Status of Emergency Request for a Limited Waiver from Section 1, Paragraph 7 of Executive Order 13770

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

TO: Ethics File for Dennis "Lee" Forsgren

On June 18, 2017, Mr. Dennis "Lee" Forsgren was appointed to a non-career SES position at EPA. As such, he is subject to Executive Order 13770, including Section 1, Paragraph 7 that applies to former registered lobbyists. During the past two years, Mr. Forsgren served as a federally registered lobbyist on behalf of the Miccosukee Tribe of Indians of Florida. Therefore, he is prohibited from participating in any particular matter on which he lobbied within the previous two years and prohibited from participating in the specific issue area in which that particular matter falls, unless he obtains a waiver pursuant to Section 3 of the Executive Order.

In September 2017, Hurricane Irma was bearing down on the state of Florida and was anticipated to have a devastating effect upon the Miccosukee Reservation and surrounding areas. In an abundance of caution given the imminent hurricane and the anticipated potential devastation, the EPA sought an emergency and limited duration waiver from Paragraph 7 to allow Mr. Forsgren to interact with the Miccosukee Tribe, if necessary. However, this waiver – that EPA sought on September 9, 2017 and was signed on October 2, 2017 -- was ultimately not necessary because the hurricane veered away from the Miccosukee Reservation. Consequently, the Tribe was not as severely impacted as initially anticipated and did not reach out to Mr. Forsgren at all. Therefore, this limited waiver was never utilized.

Because no matters arose as part of EPA's response to Hurricane Irma that involved Mr. Forsgren's participation with the Miccosukee Tribe or Reservation, EPA now considers the terms of the limited waiver null and void. Mr. Forsgren remains recused from interacting with the Miccosukee Tribe as memorialized in his attached Recusal Statement dated October 20, 2017. The signed waiver is also attached as a reference.

Attachments

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

NOV 15 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Status of Emergency Request for a Limited Waiver from Section 1, Paragraph 7 of Executive Order 13770

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

TO: Ethics File for Dennis "Lee" Forsgren

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In September 2017, Hurricane Irma was bearing down on the state of Florida and was anticipated to have a devastating effect upon the Miccosukee Reservation and surrounding areas. In an abundance of caution given the imminent hurricane and the anticipated potential devastation, the EPA sought an emergency and limited duration waiver from Paragraph 7 to allow Mr. Forsgren to interact with the Miccosukee Tribe, if necessary. However, this waiver – that EPA sought on September 9, 2017 and was signed on October 2, 2017 -- was ultimately not necessary because the hurricane veered away from the Miccosukee Reservation. Consequently, the Tribe was not as severely impacted as initially anticipated and did not reach out to Mr. Forsgren at all. Therefore, this limited waiver was never utilized.

Because no matters arose as part of EPA's response to Hurricane Irma that involved Mr. Forsgren's participation with the Miccosukee Tribe or Reservation, EPA now considers the terms of the limited waiver null and void. Mr. Forsgren remains recused from interacting with the Miccosukee Tribe as memorialized in his attached Recusal Statement dated October 20, 2017. The signed waiver is also attached as a reference.

Attachments

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

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Emergency Request for a Limited Waiver from Section 1, Paragraph 7 of Executive Order 13770

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

THROUGH: Ryan Jackson
Chief of Staff

TO: Donald F. McGahn II
Counsel to the President
The White House

This memorandum requests a limited waiver from Section 1, paragraph 7 of Executive Order 13770 (January 28, 2017) for Dennis "Lee" Forsgren, Deputy Assistant Administrator (DAA), Office of Water (OW), at the United States Environmental Protection Agency (EPA), to allow him to participate in EPA's efforts to respond to the impacts of Hurricane Irma. Prior to his appointment at EPA, Mr. Forsgren represented the Miccosukee Tribe of Indians on three different periods of time since 2000, including from 2016 until his appointment. The Miccosukee Tribe is a federally-recognized Indian Tribe whose reservation lands are in Broward and Miami-Dade Counties in Florida. He was listed as a federally registered lobbyist for his representation of the Tribe during the period of time that ended with his appointment at EPA, triggering certain recusal obligations for matters involving the Tribe under Section 1, Paragraph 7 of Executive Order 13770.

EPA requests this limited waiver to allow Mr. Forsgren participate fully and without limitation in EPA's response to the range of environmental and human health impacts related to Hurricane Irma. Specifically, when done as part of his participation in EPA's Hurricane Irma response effort, the waiver would enable Mr. Forsgren to engage with the Miccosukee Tribe and its representatives, advise the Administrator and other senior officials on matters related to the Tribe and its Reservation, and participate in decision-making that is related to the Tribe and its Reservation. A significant focus of the agency's response effort is providing services and support to state, local, and tribal governments, and the Miccosukee Tribe is and will be a government the EPA needs to be able to engage with freely and without restriction for this purpose. Because of Mr. Forsgren's understanding of and relationships with the Tribal Government and his position

as the senior appointee in the agency's Office of Water, Mr. Forsgren is uniquely positioned to help EPA achieve its mission in this emergency situation.

BACKGROUND

On January 28, 2017, President Trump signed Executive Order 13770, "Ethics Commitments by Executive Branch Appointees." All individuals appointed to political positions on or after January 20, 2017 are required to sign the ethics pledge, which sets forth the lobbying restriction at Section 1, paragraph 7:

> *If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 6, I will not for a period of 2 years after the date of my appointment participate in any particular matter on which I lobbied within the 2 years before the date of my appointment or participate in the specific issue area in which that particular matter falls.*

Mr. Forsgren signed the ethics pledge and has been acting consistent with its requirements since his appointment. Because he had been a federally registered lobbyist for Miccosukee Tribe within the preceding two years, he requires a waiver to work on the part of EPA's response to Hurricane Irma that will inevitably be specific to the Tribe. Section 3 of Executive Order 13770 allows the President or his designee to grant a waiver of any restriction contained in the Ethics Pledge.

MR. FORSGREN'S UNIQUE EXPERTISE AS IT RELATES TO EPA'S RESPONSE TO HURRICANE IRMA

Mr. Forsgren represented the Miccosukee Tribe from 2000-2003, 2005-2012, and most recently 2016 until his appointment to EPA in June 2017. In that role, he represented the Tribe on Everglades restoration, Army Corps projects that impact the Tribe in the Everglades, and Water quality issues impacting the Everglades. Through that representation he developed an understanding of the Tribe and its Reservation that is unmatched at EPA. He also developed a personal relationship with many Tribal leaders that would make him uniquely effective at communicating with them during an emergency situation, if necessary. Finally, he also gained a thorough understanding of how the Tribe and its Reservation are impacted by the water levels in its lands and surrounding areas such as the Everglades.

Because of its location within the southern reaches of Florida, the Miccosukee Reservation will almost certainly be impacted in a significant and adverse way by the wind, rain, and subsequent flooding attributable to Hurricane Irma. With wide-spread life-threatening impacts predicated across nearly all of the State of Florida, Administrator Pruitt must be able to utilize all of his senior officials in EPA's response to this emergency. That is especially true when one of those senior officials has a level of expertise to bring to the response that addresses an agency need and is not possessed by others. Mr. Forsgren possesses that unique expertise with regard to the Miccosukee Tribe, and his ability to engage with them regarding the response effort

will advance the agency's efforts to provide support and assistance to impacted governments in the most effective and timely manner possible.

REQUEST FOR A LIMITED WAIVER

The EPA is requesting a waiver from Mr. Forsgren's recusal obligations under Section 1, paragraph 7 of the Executive Order that are related to the Miccosukee Tribe and that arise as part of his participation in EPA's response to Hurricane Irma. The waiver would not extend to any other issue that Mr. Forsgren is currently recused from participating in under the Executive Order. In addition, while we are requesting a waiver without an end date in recognition of the amount of time the agency anticipates it will be engaged in response efforts, the waiver's limited substantive scope ultimately will also serve as a limitation on the duration of the waiver as well.

CONCLUSION

For the reasons set forth above, EPA respectfully requests a limited waiver of the provisions of Section 1, paragraph 7 of the Executive Order to enable Lee Forsgren to effectively carry out his duties as Deputy Assistant Administrator and advise the EPA Administrator and other senior officials on matters related to the agency's response to Hurricane Irma. He will otherwise fully comply with the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations, as well as his own attorney bar obligations.

Please feel free to contact the EPA Chief of Staff, Ryan Jackson, at (202) 564-4700 or Jackson.Ryan@epa.gov or me at (202) 564-8040 or Minoli.Kevin@epa.gov if you have any questions.

MEMORANDUM

TO: KEVIN S. MINOLI
ACTING GENERAL COUNSEL AND
DESIGNATED AGENCY ETHICS OFFICIAL
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

FROM: DONALD F. MCGAHN II
COUNSEL TO THE PRESIDENT
THE WHITE HOUSE

SUBJECT: Limited Waiver of Section 1, Paragraph 7 of Executive Order 13770

Official: Dennis "Lee" Forsgren
Deputy Assistant Administrator
United States Environmental Protection Agency

After reviewing your limited waiver request memorandum, I hereby waive the requirements of Section 1, paragraph 7 of Executive Order 13770 for Mr. Dennis "Lee" Forsgren that are related to the Miccosukee Tribe and that arise as part of his participation in EPA's response to Hurricane Irma. I have determined that it is in the public interest to grant this limited waiver because of serious threat to life and the environment posed by Hurricane Irma to the Miccosukee Reservation and surrounding areas, and Mr. Forsgren's expertise and experience working with the Miccosukee Tribe. He is an ideal person to engage with the Tribe and assist the Administrator and his senior leadership team to make EPA's response to Hurricane Irma more efficient and effective.

In light of the importance of the aforementioned efforts to the Trump Administration and to the United States Environmental Protection Agency, a limited waiver of the provisions of paragraph 7 of the Ethics Pledge (contained in Section 1 of Executive Order 13770) is justified for Mr. Forsgren so that he can ably advise the EPA Administrator. Accordingly, I authorize Dennis "Lee" Forsgren to participate personally and substantially in matters that arise as part of EPA's response to Hurricane Irma and that regard the Miccosukee Tribe or the Miccosukee Indian Reservation. I understand that he will otherwise fully comply with the remainder of the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations.

Dated: 20 October 2017

Donald F. McGahn II
Counsel to the President

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

OCT 20 2017

OFFICE OF WATER

MEMORANDUM

SUBJECT: Recusal Statement

FROM: Dennis Lee Forsgren, Jr.
Deputy Assistant Administrator

D. Lee Forsgren

TO: Michael H. Shapiro
Acting Assistant Administrator

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13770 and the Trump Ethics Pledge that I signed, as well as my own bar obligations.

FINANCIAL CONFLICTS OF INTEREST

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment. Although OGC/Ethics advises that conflicts are unlikely to arise, I understand that I am recused from participating personally and substantially in any particular matter that affects **Anthem Health** as a specific party because of my current level of financial ownership.

OBLIGATIONS UNDER EXECUTIVE ORDER 13770

Pursuant to Section 1, Paragraph 6 of the Executive Order, I understand that I am prohibited from participating in any particular matter involving specific parties in which my

former employer, **HBW Resources**, or any former client to whom I provided legal or lobbying services during the past two years is a party or represents a party. I understand that my recusal lasts until June 18, 2019, which is two years from the date that I joined federal service.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term "particular matters involving specific parties" is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term "open to all interested parties" means five or more parties.

Pursuant to Section 1, Paragraph 7 of the Executive Order, since I was a registered lobbyist during the past two years, I understand that I am also prohibited from participating in any particular matter on which I lobbied within the previous two years and prohibited from participating in the specific issue area in which that particular matter falls, unless I obtain a waiver pursuant to Section 3 of the Executive Order. I understand that this recusal lasts for two years from the date that I joined federal service.

Within the previous two years, I personally lobbied on behalf of the Miccosukee Tribe of Indians of Florida on water issues. In an abundance of caution to ensure that I meet my obligations under the Trump Ethics Pledge, I had decided to recuse myself from all **water quality issues related to South Florida** until June 18, 2019. However, due to the potential threat posed by Hurricane Irma to the Miccosukee Reservation and surrounding areas, on September 9, 2017, the EPA requested a limited waiver of the provisions of Paragraph 7. On October 2, 2017, the Counsel to the President granted this limited waiver which authorized me to participate personally and substantially in matters that arise as part of EPA's response to Hurricane Irma with respect to the Miccosukee Tribe or the Miccosukee Indian Reservation. But since the Hurricane did not impact the Miccosukee Reservation and surrounding areas, this limited waiver was ultimately not necessary and I understand that I'm still recused from all water quality issues related to South Florida.

RECUSAL LIST In effect until June 18, 2019	
FORMER EMPLOYER:	HBW Resources
FORMER LOBBYING:	Water Quality Issues Related to South Florida, expect to the extent authorized under a limited waiver for matters that arise as part of EPA's response to Hurricane Irma with respect to the Miccosukee Tribe or the Miccosukee Indian Reservation

FORMER CLIENTS:	BWX Technologies, Inc. (BWXT) Plaintiff's Group – Deepwater Horizon spill litigation Virginia Hospital and Healthcare Association Transas USA Inc.

OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS

I am advised by OGC/Ethics that Executive Order 13770 defines "former employer" to exclude any Native American tribe, [1] and the Office of Government Ethics has determined that the same exclusion applies to the definition of "former client."[2] But as an executive branch employee, I understand that I am also subject to the federal impartiality standards and have a one-year cooling off period with any former client that is a Native American tribe. Therefore, I will not participate personally and substantially in any particular matter involving specific parties in which the Miccosukee Tribe of Indians of Florida is a party or represents a party, unless I am first authorized by OGC/Ethics to participate, pursuant to 5 C.F.R. § 2635.502(d). For federal ethics purposes, I understand that my recusal remains in effect for one year from the date that I last provided services to that client, and this federal ethics limitation does not extend to particular matters of general applicability, such as rulemaking.

ATTORNEY BAR OBLIGATIONS

Pursuant to my obligations under my bar rules, I recognize that I am obliged to protect the confidences of my former clients. I also understand that I cannot participate in any matter that is the same as or substantially related to the same specific party matter that I participated in personally and substantially while in private practice, unless my bar provides for and I first obtain informed consent and notify OGC/Ethics.

SCREENING ARRANGEMENT

In order to ensure that I do not participate in matters relating to any of the entities or lobbying issue area listed above, I will instruct Louise Kitamura, OW/OAA Assistant Deputy Ethics Official, to assist in screening EPA matters directed to my attention that involve my former employer or my former clients as a specific party or the particular matter/specific issue area on which I previously lobbied. I will provide a copy of this memorandum to my principal subordinates with a copy to Justina Fugh, Senior Counsel for Ethics. I will also instruct my principal subordinates that all inquiries and comments involving the entities or lobbying issue

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[1] *See* Exec. Order 13,770, Section 2(j), which provides that "'former employer' does not include any… Native American tribe."

[2] *See* Office of Government Ethics Legal Advisory 17-02 (February 6, 2017), which states that, "[w]ith respect to Executive Order 13770, ethics officials and employees may continue to rely on OGE's prior guidance regarding Executive Order 13490 to the extent that such guidance addresses language common to both orders," and Office of Government Ethics Legal Advisory DO-09-011 (March 26, 2009), which states that "based on discussions with the White House Counsel's office, OGE has determined that the definition of former client is intended to exclude the same governmental entities as those excluded from the definition of former employer."

area on my recusal list should be directed to Louise Kitamura without my knowledge or involvement until after my recusal period ends.

If Louis Kitamura determines that a particular matter will directly involve any of the entities listed on my "specific party" recusal list or water quality issues in South Florida that are not already addressed by the limited waiver, then s/he will refer it for action or assignment to another, without my knowledge or involvement. In the event that s/he is unsure whether an issue is a particular matter from which I am recused, then s/he will consult with OGC/Ethics for a determination.

UPDATE AS NECESSARY

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes to my screening arrangement, I will provide a copy of the revised recusal statement to you, OGC/Ethics, and any principal subordinates.

cc: Justina Fugh, Senior Counsel for Ethics

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

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Request for a Waiver from Section 1, Paragraph 7 of Executive Order 13770

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

THROUGH: Ryan Jackson
Chief of Staff

TO: Donald F. McGahn II
Counsel to the President
The White House

This memorandum requests a waiver from Section 1, paragraph 7 of Executive Order 13770 (January 28, 2017) for Jeffrey M. Sands, who will be the Senior Agricultural Advisor to the Administrator of the United States Environmental Protection Agency (EPA). In this position, he will be expected to advocate for a broad range of agricultural interests within EPA so it is vital that the incumbent is unfettered in his ability to ensure that agricultural interests are fully considered as the Administrator formulates his environmental policies. At present, Mr. Sands is serving as Manager of Syngenta's Federal Government and Industry Relations group and as Director of SyngentaPAC, a political action committee. As a federally registered lobbyist for Syngenta since 2015, Mr. Sands has been focusing on a wide range of agricultural issues including pesticides, food labeling, genetically modified organisms, biofuels and biotechnology and renewable fuels. EPA seeks to appoint Mr. Sands into a non-career SES position and, as such, will ask that he sign the Trump Ethics Pledge.

EPA requests this waiver to allow Mr. Sands to utilize the full range of his extensive knowledge and expertise in agriculture and related issues so that he can effectively and thoroughly advise the Administrator and other senior officials. His comprehensive understanding of the challenges and nuances of wide-ranging agricultural issues are critically needed to counsel and advise the Administrator and senior leadership in this vital area that affects all Americans. EPA seeks this waiver to permit Mr. Sands to work personally and substantially on all agriculture issues, including those on which he previously lobbied.

BACKGROUND

On January 28, 2017, President Trump signed Executive Order 13770, "Ethics Commitments by Executive Branch Appointees." All individuals appointed to political positions on or after January 20, 2017 are required to sign the ethics pledge, which sets forth the lobbying restriction at Section 1, paragraph 7:

> *If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 6, I will not for a period of 2 years after the date of my appointment participate in any particular matter on which I lobbied within the 2 years before the date of my appointment or participate in the specific issue area in which that particular matter falls.*

If appointed, Mr. Sands will sign this pledge. As a federally registered lobbyist for Syngenta within the preceding two years, he requires a waiver to work on agricultural issues for which he may previously have lobbied. Section 3 of Executive Order 13770 allows the President or his designee to grant a waiver of any restriction contained in the Ethics Pledge. Please note, however, that EPA is not requesting a waiver of Section 1, paragraph 6.

MR. SANDS' UNIQUE EXPERTISE

Mr. Sands began his higher education at Abraham Baldwin Agricultural College where he obtained an associate of science degree in environmental horticulture. He is a graduate of Valdosta State University in Valdosta, Georgia, where he obtained both a bachelor's degree in organizational communication and a masters in public administration. He served as Agricultural Assistant to Congressman Tom Marino and, in this capacity, assisted in developing agricultural related legislation, including the Farm Bill in 2011 and 2012. Following his congressional service, Mr. Sands was named the Director of Public Policy for the Agricultural Retailers Association, which represented more than 10,000 individuals throughout the agriculture retail industry. In this position, he worked assiduously to build and develop personal relationships among Members of Congress, their staff and agency officials to raise awareness of agricultural interests.

Since 2015, Mr. Sands has served as the Manager of Federal Government and Industry Relations at Syngenta, a multi-billion dollar agribusiness company. This position has allowed Mr. Sands to complement his congressional and trade association experience with the unique private sector perspective. Taken together, he has a breadth of knowledge and experience in all facets of agricultural concerns. His demonstrated expertise in an impressive range of agricultural issues through his years of experience will greatly benefit EPA and the Administrator as Mr. Sands works to develop consensus with affected constituencies to build broad coalitions in support of legislation or regulatory reform.

The EPA Administrator needs to be able to utilize Mr. Sands' subject-matter expertise in all aspects of agricultural issues as he formulates policies at the EPA. Because the EPA does not yet have a Deputy Administrator, General Counsel, or any other Presidentially Appointed Senate confirmed political appointees, the Administrator needs to be able to rely confidently on his agricultural advisor. For his part, Mr. Sands must be free to provide his advice to the EPA's top policy-makers and share the unique perspective and expertise he has obtained through the diverse range of positions he has held with distinction throughout his career. His invaluable knowledge and experience will assist the Administrator and the Agency with respect to agricultural issues, which affect all of EPA's environmental programs.

REQUEST FOR A WAIVER

EPA does not seek this waiver lightly. The Administrator still lacks the senior members of his political team and must be able to rely upon his policy advisors. He has identified Mr. Sands as a valuable addition to his team, but needs for him to be able to work on the full range of agricultural issues to the maximum extent possible. For the reasons set forth above, EPA respectfully requests a waiver of the provisions of Section 1, paragraph 7 of the Executive Order to enable Jeff Sands to effectively carry out duties as the Senior Advisor for Agriculture and advise the EPA Administrator accordingly. He will otherwise fully comply with the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations. In particular, Mr. Sands will remain restricted by the Executive Order, Section 1, paragraph 6, from participating in any particular matter involving specific parties that is directly and substantially related to his former employer, Syngenta.

Please feel free to contact the EPA Chief of Staff, Ryan Jackson, at (202) 564-4700 or Jackson.Ryan@epa.gov or me at (202) 564-8040 or Minoli.Kevin@epa.gov if you have any questions.

MEMORANDUM

TO: KEVIN S. MINOLI
ACTING GENERAL COUNSEL AND
DESIGNATED AGENCY ETHICS OFFICIAL
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

FROM: DONALD F. MCGAHN II
COUNSEL TO THE PRESIDENT
THE WHITE HOUSE

SUBJECT: Waiver of Section 1, Paragraph 7 of Executive Order 13770

Official: Jeffrey M. Sands to be appointed as Senior Advisor for Agriculture to the EPA Administrator

After reviewing your limited waiver request memorandum, I hereby waive the requirements of Section 1, paragraph 7 of Executive Order 13770 to Mr. Jeff Sands to allow him, upon his appointment, to advise the Administrator of the United States Environmental Protection Agency and other senior Agency officials with respect to agricultural issues. I have determined that it is in the public interest to grant this waiver because of Mr. Sands' extensive expertise in this area and in various entities, programs and policies. His deep understanding of agricultural issues forged through his previous service with Congress, a trade association and a company make him an ideal person to assist the Administrator and his senior leadership team to make EPA and its agriculture programs more efficient and effective.

In light of the importance of the aforementioned efforts to the Trump Administration and to the United States Environmental Protection Agency, a waiver of the provisions of paragraph 7 of the Ethics Pledge (contained in Section 1 of Executive Order 13770) is justified for Mr. Sands in the event of his appointment so that he can ably advise the EPA Administrator. Accordingly, I authorize Jeff Sands to be able to participate personally and substantially in matters regarding agricultural issues, including those on which he previously lobbied. I understand that he will otherwise fully comply with the remainder of the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations.

Dated: 2 OCTOBER 2017

Donald F. McGahn II
Counsel to the President

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

DEC 11 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Waiver Issued under Executive Order 13770 for Jeffrey M. Sands

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

TO: E. Scott Pruitt
Administrator

As you know, Executive Order 13770 (January 28, 2017) requires that every full-time political appointee sign an Ethics Pledge that sets forth additional ethics requirements. Waivers to the Pledge may be issued by the President or his designee. Any waivers issued pursuant to this Executive Order 13770 must be provided to the head of the Agency in which the person serves or has been appointed to serve. *See* the Office of Government Ethics Program Advisory entitled "Posting of Waivers Issued under Executive Order 13770," PA-17-05 (September 21, 2017).

Attached for your reference is a copy of EPA's request for a waiver of Section 1, Paragraph 7 of Executive Order 13770 for Jeffrey M. Sands, Senior Agricultural Advisor to the Administrator, and a copy of the waiver signed by the Counsel to the President on October 2, 2017. This waiver allows Jeff Sands to participate personally and substantially in matters regarding agricultural issues, including those on which he previously lobbied.

Please feel free to contact me at (202) 564-8040 if you have any questions.

Attachments

cc: Ryan Jackson, Chief of Staff
Justina Fugh, Senior Counsel for Ethics

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

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Request for a Waiver from Section 1, Paragraph 7 of Executive Order 13770

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

THROUGH: Ryan Jackson
Chief of Staff

TO: Donald F. McGahn II
Counsel to the President
The White House

This memorandum requests a waiver from Section 1, paragraph 7 of Executive Order 13770 (January 28, 2017) for Jeffrey M. Sands, who will be the Senior Agricultural Advisor to the Administrator of the United States Environmental Protection Agency (EPA). In this position, he will be expected to advocate for a broad range of agricultural interests within EPA so it is vital that the incumbent is unfettered in his ability to ensure that agricultural interests are fully considered as the Administrator formulates his environmental policies. At present, Mr. Sands is serving as Manager of Syngenta's Federal Government and Industry Relations group and as Director of SyngentaPAC, a political action committee. As a federally registered lobbyist for Syngenta since 2015, Mr. Sands has been focusing on a wide range of agricultural issues including pesticides, food labeling, genetically modified organisms, biofuels and biotechnology and renewable fuels. EPA seeks to appoint Mr. Sands into a non-career SES position and, as such, will ask that he sign the Trump Ethics Pledge.

EPA requests this waiver to allow Mr. Sands to utilize the full range of his extensive knowledge and expertise in agriculture and related issues so that he can effectively and thoroughly advise the Administrator and other senior officials. His comprehensive understanding of the challenges and nuances of wide-ranging agricultural issues are critically needed to counsel and advise the Administrator and senior leadership in this vital area that affects all Americans. EPA seeks this waiver to permit Mr. Sands to work personally and substantially on all agriculture issues, including those on which he previously lobbied.

BACKGROUND

On January 28, 2017, President Trump signed Executive Order 13770, "Ethics Commitments by Executive Branch Appointees." All individuals appointed to political positions on or after January 20, 2017 are required to sign the ethics pledge, which sets forth the lobbying restriction at Section 1, paragraph 7:

> *If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 6, I will not for a period of 2 years after the date of my appointment participate in any particular matter on which I lobbied within the 2 years before the date of my appointment or participate in the specific issue area in which that particular matter falls.*

If appointed, Mr. Sands will sign this pledge. As a federally registered lobbyist for Syngenta within the preceding two years, he requires a waiver to work on agricultural issues for which he may previously have lobbied. Section 3 of Executive Order 13770 allows the President or his designee to grant a waiver of any restriction contained in the Ethics Pledge. Please note, however, that EPA is not requesting a waiver of Section 1, paragraph 6.

MR. SANDS' UNIQUE EXPERTISE

Mr. Sands began his higher education at Abraham Baldwin Agricultural College where he obtained an associate of science degree in environmental horticulture. He is a graduate of Valdosta State University in Valdosta, Georgia, where he obtained both a bachelor's degree in organizational communication and a masters in public administration. He served as Agricultural Assistant to Congressman Tom Marino and, in this capacity, assisted in developing agricultural related legislation, including the Farm Bill in 2011 and 2012. Following his congressional service, Mr. Sands was named the Director of Public Policy for the Agricultural Retailers Association, which represented more than 10,000 individuals throughout the agriculture retail industry. In this position, he worked assiduously to build and develop personal relationships among Members of Congress, their staff and agency officials to raise awareness of agricultural interests.

Since 2015, Mr. Sands has served as the Manager of Federal Government and Industry Relations at Syngenta, a multi-billion dollar agribusiness company. This position has allowed Mr. Sands to complement his congressional and trade association experience with the unique private sector perspective. Taken together, he has a breadth of knowledge and experience in all facets of agricultural concerns. His demonstrated expertise in an impressive range of agricultural issues through his years of experience will greatly benefit EPA and the Administrator as Mr. Sands works to develop consensus with affected constituencies to build broad coalitions in support of legislation or regulatory reform.

The EPA Administrator needs to be able to utilize Mr. Sands' subject-matter expertise in all aspects of agricultural issues as he formulates policies at the EPA. Because the EPA does not yet have a Deputy Administrator, General Counsel, or any other Presidentially Appointed Senate confirmed political appointees, the Administrator needs to be able to rely confidently on his agricultural advisor. For his part, Mr. Sands must be free to provide his advice to the EPA's top policy-makers and share the unique perspective and expertise he has obtained through the diverse range of positions he has held with distinction throughout his career. His invaluable knowledge and experience will assist the Administrator and the Agency with respect to agricultural issues, which affect all of EPA's environmental programs.

REQUEST FOR A WAIVER

EPA does not seek this waiver lightly. The Administrator still lacks the senior members of his political team and must be able to rely upon his policy advisors. He has identified Mr. Sands as a valuable addition to his team, but needs for him to be able to work on the full range of agricultural issues to the maximum extent possible. For the reasons set forth above, EPA respectfully requests a waiver of the provisions of Section 1, paragraph 7 of the Executive Order to enable Jeff Sands to effectively carry out duties as the Senior Advisor for Agriculture and advise the EPA Administrator accordingly. He will otherwise fully comply with the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations. In particular, Mr. Sands will remain restricted by the Executive Order, Section 1, paragraph 6, from participating in any particular matter involving specific parties that is directly and substantially related to his former employer, Syngenta.

Please feel free to contact the EPA Chief of Staff, Ryan Jackson, at (202) 564-4700 or Jackson.Ryan@epa.gov or me at (202) 564-8040 or Minoli.Kevin@epa.gov if you have any questions.

MEMORANDUM

TO: KEVIN S. MINOLI
ACTING GENERAL COUNSEL AND
DESIGNATED AGENCY ETHICS OFFICIAL
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

FROM: DONALD F. MCGAHN II
COUNSEL TO THE PRESIDENT
THE WHITE HOUSE

SUBJECT: Waiver of Section 1, Paragraph 7 of Executive Order 13770

Official: Jeffrey M. Sands to be appointed as Senior Advisor for Agriculture to the EPA Administrator

After reviewing your limited waiver request memorandum, I hereby waive the requirements of Section 1, paragraph 7 of Executive Order 13770 to Mr. Jeff Sands to allow him, upon his appointment, to advise the Administrator of the United States Environmental Protection Agency and other senior Agency officials with respect to agricultural issues. I have determined that it is in the public interest to grant this waiver because of Mr. Sands' extensive expertise in this area and in various entities, programs and policies. His deep understanding of agricultural issues forged through his previous service with Congress, a trade association and a company make him an ideal person to assist the Administrator and his senior leadership team to make EPA and its agriculture programs more efficient and effective.

In light of the importance of the aforementioned efforts to the Trump Administration and to the United States Environmental Protection Agency, a waiver of the provisions of paragraph 7 of the Ethics Pledge (contained in Section 1 of Executive Order 13770) is justified for Mr. Sands in the event of his appointment so that he can ably advise the EPA Administrator. Accordingly, I authorize Jeff Sands to be able to participate personally and substantially in matters regarding agricultural issues, including those on which he previously lobbied. I understand that he will otherwise fully comply with the remainder of the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations.

Dated: 2 OCTOBER 2017

Donald F. McGahn II
Counsel to the President