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

DEC 28 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of Texas

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

TO: Anne Idsal
Regional Administrator
Region 6

As the Regional Administrator for the United States Environmental Protection Agency (EPA) Region 6, you seek permission to participate in specific party matters involving the State of Texas. Within the last year, prior to being selected for this position, you served as Chief Clerk and Deputy Land Commissioner for the Texas General Land Office (TX GLO).

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, state government is excluded under the definition of "former employer."[1] Therefore, the Ethics Pledge does not apply to your State of Texas employment. But since federal ethics rules do not contain a similar exclusion for state government, those rules do apply to your employment with the State of Texas.

I understand that you are not vested in the defined benefit plan with the State of Texas. As such, you do not have a financial conflict of interest pursuant to 18 U.S.C. § 208. However, 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 the State of Texas pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you resigned from the TX GLO, absent

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

an impartiality determination from me, you cannot participate in any specific party matter in which the State of Texas is a party or represents a party if that matter is likely to have a direct and predictable effect upon the State 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. Your area of responsibility includes Texas, as well as Arkansas, Louisiana, New Mexico, Oklahoma, and 66 federally-recognized tribes. In your role as Regional Administrator, you are expected to communicate freely with the states in your region, including Texas, and you will be asked to participate in discussions and meetings related to particular matters that affect the State. 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 the State of Texas 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 TX GLO. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since March 2015, you have served as the Chief Clerk for the TX GLO, which is a Texas state agency responsible for managing state lands and the Texas coast, among other things. As Chief Clerk you oversaw all budget and expenditure matters and initiated the TX GLO's reorganization efforts to optimize business functions and provide cost savings for taxpayers. You served in this role for over two years, but I note that you previously served as General Counsel for TX GLO and also worked for the state environmental agency, the Texas Commission of Environmental Quality (TCEQ). Sensitivities regarding your impartiality will necessarily revolve around those issues in which you participated personally and substantially for the State of Texas in all of your previous roles. But, for purposes of the federal

impartiality standards, we are focused only on your "covered relationship" with your previous employer from the last year, the TX GLO. I also note that states 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 state governmental entities on a continuing and frequent basis.

Nature and importance of the employee's role – Texas constitutes a significant portion of your portfolio as the leader of your region since your area of responsibility covers Arkansas, Louisiana, New Mexico, Oklahoma, Texas, and 66 federally-recognized tribes. In your role as Regional Administrator, you are expected to communicate freely with states, including Texas.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for the TX GLO that will rise to your level of attention, 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 the State of Texas, but not on the very same specific party matters on which you worked on personally and substantially while employed by the TX GLO. This "cooling off" period with the State of Texas will last for one year from the date you left the TX GLO. 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, 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 those matters in which you had previously participated unless OGC/Ethics first determines that the Agency's interest in your participation outweighs any impartiality concern and authorizes you to participate.

Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters if necessary. To that end, I understand that you will not participate in any particular matter involving specific parties that are still pending with EPA that you worked on personally and substantially while at TCEQ. You are cognizant of your attorney bar rules that prohibit you from participating in any matter that is the same as or substantially related to the same specific party matter that you previously participated in personally and substantially, unless your bar provides for and you first obtain informed consent and notify OGC/Ethics.

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: Sam Coleman, Deputy Regional Administrator, Region 6
Jim Payne, Regional Counsel, Region 6
Ben Harrison, Deputy Regional Counsel, Region 6
Jan Gerro, Regional Ethics Counsel, Region 6
Terry Sykes, Regional Ethics Counsel, Region 6
Justina Fugh, Senior Counsel for Ethics

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

JAN - 3 2018

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of Wisconsin

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

TO: Cathy Stepp
Regional Administrator
Region 5

As the Regional Administrator for the United States Environmental Protection Agency (EPA) Region 5, you seek permission to participate in specific party matters involving the State of Wisconsin. Within the last year, prior to being selected for this position, you served as Secretary of the Wisconsin Department of Natural Resources.

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, state government is excluded under the definition of "former employer."[1] Therefore, the Ethics Pledge does not apply to your State of Wisconsin employment. But since federal ethics rules do not contain a similar exclusion for state government, those rules do apply to your employment with the State of Wisconsin.

I understand that you have a defined benefit plan with the State of Wisconsin. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. In the Agency's experience, it is unlikely that you as the Regional Administrator will be in any position to affect the State's ability or willingness to pay these benefits to its retirees. I do not expect, then, that 18 U.S.C. § 208 will prohibit you from carrying out your official EPA duties.

---

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

However, 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 the State of Wisconsin pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you resigned from the Wisconsin Department of Natural Resources, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of Wisconsin is a party or represents a party if that matter is likely to have a direct and predictable effect upon the State 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. Your area of responsibility includes Wisconsin, as well as Indiana, Illinois, Michigan, Minnesota and Ohio. In your role as Regional Administrator, you are expected to communicate freely with the states in your region, including Wisconsin, and you will be asked to participate in discussions and meetings related to particular matters that affect the State. 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 the State of Wisconsin 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 Wisconsin Department of Natural Resources. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since 2011, you have served as the Secretary for the Wisconsin Department of Natural Resources, which is the third largest agency in Wisconsin. In

this significant leadership role, you led the state's environmental agency responsible for state enforcement and protection of wildlife, fisheries, state parks, trail, forests and environmental permitting. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for the Department of Natural Resources. States 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 state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I have concluded that there is only a remote possibility that any of EPA's actions will affect the State's ability or willingness to honor its contractual obligations to pay benefits to its retirees. Your actions as the Regional Administrator will not affect any pay-outs you may receive from your retirement plan.

Nature and importance of the employee's role – Wisconsin constitutes a significant portion of your portfolio as the leader of your region since your area of responsibility covers Indiana, Illinois, Michigan, Minnesota, Ohio and Wisconsin. In your role as Regional Administrator, you are expected to communicate freely with states, including Wisconsin.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for the Wisconsin Department of Natural Resources that will rise to your level of attention, 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 the State of Wisconsin, but not on the very same specific party matters on which you worked on personally and substantially while employed by the Wisconsin Department of Natural Resources. This "cooling off" period with the State of Wisconsin will last for one year from the date you left the Department of Natural Resources for those specific party matters that you did not participate in personally and substantially. You have voluntarily agreed not participate in any specific party matter involving Wisconsin in which you had previously participated. 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, 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 those matters in which you had

previously participated unless OGC/Ethics first 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 the State of Wisconsin with the limitation described above, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves Wisconsin. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters, although you are advised to confer with your Regional Counsel should such a circumstance arise.

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 your regional ethics team.

cc: Ed Chu, Acting Deputy Regional Administrator, Region 5
Leverett Nelson, Regional Counsel, Region 5
Ann Coyle, Regional Ethics Counsel, Region 5
Justina Fugh, Senior Counsel for Ethics

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

DEC 19 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Specific Party Matters Involving the State of Alaska

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

TO: Chris Hladick
Regional Administrator
Region 10

As the Regional Administrator for the United States Environmental Protection Agency (EPA) Region 10, you seek permission to participate in specific party matters involving the State of Alaska. Within the last year, prior to being selected for this position, you served as Commissioner of the Department of Commerce, Community and Economic Development for the State of Alaska.

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, state government is excluded under the definition of "former employer."[1] Therefore, the Ethics Pledge does not apply to your State of Alaska employment. But since federal ethics rules do not contain a similar exclusion for state government, those rules do apply to your employment with the State of Alaska.

I understand that you have a defined benefit plan with the State of Alaska. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. In the Agency's experience, it is unlikely that you as the Regional Administrator will be in any position to affect the State's ability or willingness to pay these benefits to its retirees. I do not expect, then, that 18 U.S.C. § 208 will prohibit you from carrying out your official EPA

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

duties.

However, 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 the State of Alaska pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the time you resign from the State of Alaska, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of Alaska is a party or represents a party if that matter is likely to have a direct and predictable effect upon the State 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 Region 10 and part of the Agency's political team. Your area of responsibility includes Alaska, as well as Washington, Oregon, Idaho, Alaska, and 271 federally-recognized tribes. In your role as Regional Administrator, you are expected to communicate freely with the states in your region, including Alaska. You will therefore be expected to participate in discussions and meetings related to particular matters that affect Alaska. 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 the State of Alaska. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Your prior employment was with the Department of Commerce, Community and Economic Development, which is separate from the state environmental agency, the Department of Environmental Conservation. I note that, in your

official capacity, you also served in fiduciary roles on two state boards.[2] States 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 on a continuing and frequent basis.

Effect of the matter upon your financial interest – I have concluded that there is only a remote possibility that any of EPA's actions will affect the State's ability or willingness to honor its contractual obligations to pay benefits to its retirees. Your actions as the Regional Administrator will not affect any pay-outs you may receive from your retirement plan.

Nature and importance of the employee's role – As the leader of Region 10, Alaska is a substantial area of responsibility for you since the Region covers Washington, Oregon, Idaho, Alaska, and 271 federally-recognized tribes in the Pacific Northwest and Alaska. In your role as Regional Administrator, you are expected to communicate freely with states, including Alaska.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you may be asked to participate, including ones that merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation in nationally significant issues will be of importance to the Administrator.

While we have issued you this determination to interact with the State of Alaska, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves Alaska. Nothing in this impartiality determination should preclude you from choosing to recuse yourself, although you are advised to confer with your Regional Counsel should such a circumstance arise.

This authorization will remain in effect for the remainder of your cooling off period. After one year from the date of your resignation from the State of Alaska, you will no longer have a covered relationship with Alaska under the impartiality standards and will no longer require this determination.

---

[2] Alaska Marine Pilots Board and the Alaska Mariculture Task Force. Any other board service was either non-fiduciary or delegated to a subordinate. EPA believes it unlikely that you participated personally and substantially in those matters and that there is little likelihood of any nexus with your EPA duties.

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.

cc: Michelle Pirzadeh, Deputy Regional Administrator, Region 10
Allyn Stern, Regional Counsel, Region 10
Socorro Rodriguez, Regional Ethics Counsel, Region 10
Garth Wright, Regional Ethics Counsel, Region 10
Justina Fugh, Senior Counsel for Ethics

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

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

JAN 11 2018

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of Wisconsin

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

TO: David Ross
Assistant Administrator
Office of Water

As the Assistant Administrator for the United States Environmental Protection Agency's (EPA) Office of Water, you seek permission to participate in specific party matters involving the State of Wisconsin. Within the last year, prior to being selected for this position, you served as Wisconsin Assistant Attorney General and Director of the Environmental Protection Unit for the Wisconsin Department of Justice.

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, state government is excluded under the definition of "former employer."[1] Therefore, the Ethics Pledge does not apply to your State of Wisconsin employment. But since federal ethics rules do not contain a similar exclusion for state government, those rules do apply to your employment with the State of Wisconsin.

I understand that you have both defined benefit and defined compensation plans with the State of Wisconsin. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. In the Agency's experience, it is unlikely that you as the Assistant Administrator for Water will be in any position to affect the State's ability or willingness to pay these benefits to its retirees. I do not expect, then, that 18

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

U.S.C. § 208 will prohibit you from carrying out your official EPA duties.

However, 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 Assistant Administrator, you will have a "covered relationship" with the State of Wisconsin pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you resigned from the Wisconsin Department of Justice, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of Wisconsin is a party or represents a party if that matter is likely to have a direct and predictable effect upon the State 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.

In reviewing these factors, I have concluded that the interest of the United States Government in your participation outweighs any concerns about your impartiality and I am authorizing you to participate as Assistant Administrator for Water in particular matters that involve the State of Wisconsin 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 Wisconsin Department of Justice. In making this determination, I have taken the following factors into consideration:

<u>Nature of the relationship involved</u> – Since May 2016, you have served as the Wisconsin Assistant Attorney General and Director of the Environmental Protection Unit for the Wisconsin Department of Justice. In this role, you were responsible for managing the environmental litigation unit which represents the Wisconsin Department of Natural Resources and the State of Wisconsin in federal and state court, defending agency decisions, prosecuting environmental enforcement cases, and providing legal and policy advice on environmental and natural resource

issues. You served in this role for over one year, but I note that you previously worked in the Wyoming Attorney General's Office as a Senior Assistant Attorney General and a member of the Water and Natural Resources Division. In Wyoming, you were responsible for representing the Water Quality Division of the Wyoming Department of Environmental Quality in all environmental and natural resources legal matters. Sensitivities regarding your impartiality will necessarily revolve around those issues in which you participated personally and substantially in all of your previous roles. But, for purposes of the federal impartiality standards, we are focused only on your "covered relationship" with your previous employer from the last year, the Wisconsin Department of Justice. I also note that states 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 state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I have concluded that there is only a remote possibility that any of EPA's actions will affect the State's ability or willingness to honor its contractual obligations to pay benefits to its retirees. Your actions as the Assistant Administrator will not affect any pay-outs you may receive from your retirement plans.

Nature and importance of the employee's role – As the Assistant Administrator for Water, you are responsible for advising the Administrator in matters pertaining to the implementation of various water-related statutes to ensure safe drinking water, the restoration and maintenance of oceans, watersheds and their aquatic ecosystems to protect human health, support economic and recreational activities, and provide healthy habitat for fish, plants and wildlife. OW frequently works with state and local governments to provide guidance, specify scientific methods and data collection requirements, perform oversight and facilitate communications. In the role of Assistant Administrator, you are expected to communicate freely with states, including Wisconsin.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for the Wisconsin Department of Justice that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Assistant Administrator for Water 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 the State of Wisconsin, but not on the very same specific party matters on which you worked on personally and substantially while employed by the Wisconsin Department of Justice. This "cooling off" period with the State of Wisconsin will last for one year from the date you left the Wisconsin Department of Justice. 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 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 those matters in which you had previously participated unless OGC/Ethics first determines that the Agency's interest in your participation outweighs any impartiality concern and authorizes you to participate.

Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters if necessary. To that end, I understand that you will not participate in any particular matter involving specific parties that are still pending with EPA that you worked on personally and substantially while at the Wyoming Attorney General's Office. You are cognizant of your attorney bar rules that prohibit you from participating in any matter that is the same as or substantially related to the same specific party matter that you previously participated in personally and substantially, unless your bar provides for and you first obtain informed consent and notify OGC/Ethics.

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.

cc: Dennis Lee Forsgren, Jr., Deputy Assistant Administrator
Justina Fugh, Senior Counsel for Ethics

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

DEC 1 1 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving Holland & Hart LLP

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

TO: Doug Benevento
Regional Administrator
Region 8

This memorandum addresses your ethics obligations with respect to Holland & Hart LLP (Holland & Hart), a law firm that practices environmental law and where your spouse is employed as an attorney. Because your spouse is not an equity sharing principal and does not receive any bonus based on the profitability of the firm, you do not have a financial conflict of interest with her employer, Holland & Hart. What remains is whether you may participate in particular matters in which your spouse's employer is a party or represents a party. As explained in more detail below, I am granting you a limited impartiality determination.

Pursuant to 5 C.F.R. § 2635.502(b)(1)(iii), you have a "covered relationship" with Holland & Hart given your spouse's employment. 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." Absent an impartiality determination, you cannot participate in any specific party matter in which Holland & Hart is a party or represents a party if that matter is likely to have a direct and predictable effect upon the firm 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.

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 Holland & Hart with the following limitation, however unlikely: you must recuse yourself from participation in EPA specific party matters if your spouse participates in the same specific party matters. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Your spouse is employed part time as of counsel at Holland & Hart. Her areas of practice do not include environmental matters or involve the EPA. Thus, the intersection between your spouse's work and that of the Agency is extremely remote.

Effect of the matter upon your financial interest – Your spouse has no equity interest in the firm's revenues since she is not an equity sharing partner at the firm. Also, she does not receive any bonus from the firm. Due to this compensation arrangement with the firm, I conclude that there is no possibility that any of EPA's actions involving Holland & Hart will affect your own financial interests or those 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 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 involve Holland & Hart.

Sensitivity of the matter – I understand that in Region 8 there are already a number of specific party matters where Holland & Hart provides legal representation. These matters will likely rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation and input 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 specific party matters that involve Holland & Hart, but not the same specific party matters which your spouse participates in while employed at the firm. If the Agency determines that we have a compelling reason for your participation as an EPA official on any specific party matter that your spouse participates 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 EPA ethics officials determine 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 Holland & Hart on specific party matters, except for any specific party matter in which your spouse participates, please note that you may elect to voluntarily make adjustments to your duties and not participate in a particular matter that involves Holland & Hart. Nothing in this impartiality determination should preclude you from choosing to recuse yourself altogether from specific party matters in which Holland & Hart represents a party, but doing so is not necessary under the federal ethics rules.

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: Deb Thomas, Deputy Regional Administrator, Region 8
Kenneth Schefski, Regional Counsel, Region 8
Paul Logan, Deputy Regional Counsel, Region 8
Elyana Sutin-McCeney, Deputy Regional Counsel, Region 8
Michael Gleason, Regional Ethics Counsel, Region 8
Justina Fugh, Senior Counsel for Ethics

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

JAN 11 2018

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of Pennsylvania

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

TO: Jenifer Fields
Chief of Staff
Region 3

As the Chief of Staff for the United States Environmental Protection Agency (EPA) Region 3, you seek permission to participate in specific party matters involving the State of Pennsylvania. Within the last year, prior to being selected for this position, you served as the Regional Manager of the Clean Water Program for the Pennsylvania Department of Environmental Protection (DEP).

I understand that you have a defined benefit plan with the State of Pennsylvania. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. In the Agency's experience, it is unlikely that you as the Chief of Staff will be in any position to affect the State's ability or willingness to pay these benefits to its retirees. I do not expect, then, that 18 U.S.C. § 208 will prohibit you from carrying out your official EPA duties.

As an Administratively Determined (AD) appointment, you are not required to sign President Trump's Ethics Pledge because this type of appointment falls outside the definition of "appointee" set forth at Executive Order 13770 at Section 2(b).[1] However, what remains is an

[1] *See* Office of Government Ethics advisories entitled "Guidance on Executive Order 13770," LA-17-03 (3/20/17) and "Executive Order 13770," LA-17-02 (2/6/17), which apply the following OGE advisories from the last administration in full: "Who Must Sign the Ethics Pledge?" DO-09-010 (3/16/10); and "Signing the Ethics Pledge,"

impartiality concern under the federal ethics rules 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 Chief of Staff you will have a "covered relationship" with the State of Pennsylvania pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you resigned from DEP, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of Pennsylvania is a party or represents a party if that matter is likely to have a direct and predictable effect upon the State 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 the Chief of Staff, you serve as a key advisor to the Regional Administrator in all aspects under his purview. As part of the Region's leadership team, your area of responsibility will include Pennsylvania, as well as Delaware, Maryland, Virginia, West Virginia, and the District of Columbia. In your role as Chief of Staff, you are expected to communicate freely with the states in your region, including Pennsylvania, and you will be asked to participate in discussions and meetings related to particular matters that affect the State. 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 Chief of Staff in particular matters that involve the State of Pennsylvania 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 DEP. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since 2006, you have served as Regional Manager for the Clean Water Program at DEP. In this leadership role, you were responsible for a staff of 40

DO-090-005 (2/10/09).

people, handling all aspects of municipal storm water, sewage and industrial wastewater planning, permitting, compliance and enforcement. You assisted in administering the Southeast Region of Pennsylvania's NPDES program through developing, reviewing and defending NPDES and construction permits for DEP. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for DEP. States 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 state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I have concluded that there is only a remote possibility that any of EPA's actions will affect the State's ability or willingness to honor its contractual obligations to pay benefits to its retirees. Your actions as Chief of Staff will not affect any pay-outs you may receive from your retirement plan.

Nature and importance of the employee's role – As Chief of Staff for Region 3, Pennsylvania constitutes a significant portion of your portfolio since your area of responsibility covers Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia. In your role as Chief of Staff, you are expected to communicate freely with states, including Pennsylvania.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for DEP that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Chief of Staff in such matters will be of importance to the Regional 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 the State of Pennsylvania, but not on the very same specific party matters on which you worked personally and substantially while employed by DEP. With respect to those particular matters involving Pennsylvania as a specific party and in which you previously participated personally and substantially, you have voluntarily agreed, pursuant to our advice, not to participate at all for the duration of your EPA tenure. If, however 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, your Regional Administrator or Regional Counsel may ask OGC/Ethics to reconsider the factors and information listed above on a case-by-case basis. Unless and until you receive written authorization, you must continue to recuse yourself from those matters in which you had previously participated unless OGC/Ethics first 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 the State of Pennsylvania with the limitation described above, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves Pennsylvania. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters, although you are advised to confer with your Regional Counsel should such a circumstance arise.

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 your regional ethics team.

cc: Cosmo Servidio, Regional Administrator, Region 3
Cecil A. Rodrigues, Deputy Regional Administrator, Region 3
Mary Coe, Regional Counsel, Region 3
Deane Bartlett, Regional Ethics Counsel, Region 3
Justina Fugh, Senior Counsel for Ethics

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

OFFICE OF
GENERAL COUNSEL

JAN 10 2018

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of Florida

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

TO: Matthew Leopold
General Counsel

As the General Counsel for the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the State of Florida. Within the last year, prior to being selected for this position, you provided legal services to the Florida Department of Environmental Protection (FL DEP). You ceased providing legal services to the FL DEP on June 30, 2017.

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, Executive Order 13770 defines "former employer" to exclude state or local government entities,[1] and the Office of Government Ethics has determined that the same exclusion applies to the definition of "former client."[2] Therefore, the Ethics Pledge does not apply to your former client. But since federal ethics rules do not contain a similar exclusion for state government, those rules do apply to your former client.

I understand that you have a defined contribution plan with the State of Florida. As such,

---

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

[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."

you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. In the Agency's experience, it is unlikely that you as General Counsel will be in any position to affect the State's ability or willingness to pay these benefits to its retirees. I do not expect, then, that 18 U.S.C. § 208 will prohibit you from carrying out your official EPA duties.

However, 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 General Counsel, you will have a "covered relationship" with the State of Florida pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you last provided legal services to the FL DEP, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of Florida is a party or represents a party if that matter is likely to have a direct and predictable effect upon the State 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). Absent this impartiality determination, your "cooling off" period with the State of Florida will last until June 30, 2018, which is one year from the date you last provided services to them.

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 General Counsel, you are the chief legal advisor to the Agency and Administrator, and part of the Agency's political team. In your role as General Counsel, you are expected to communicate freely with states and you will be asked to participate in discussions and meetings related to particular matters that affect the State of Florida. 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 General Counsel in particular matters that

involve the State of Florida 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 providing legal services to the FL DEP or while employed by Florida. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Within the last year, you have provided legal services to the FL DEP, which is the Florida state agency responsible for environmental management and stewardship. I note that you previously served as General Counsel for the FL DEP until you left the agency in March 2015. As a private sector attorney, you provided services to the FL DEP in a case in which the United States is not a party, and those services ended on June 30, 2017. Sensitivities regarding your impartiality will necessarily revolve around those issues in which you participated personally and substantially for the FL DEP in all of your previous roles. But, for purposes of the federal impartiality standards, we are focused only on your "covered relationship" with your former client from the last year. I also note that states 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 state governmental entities on a continuing and frequent basis.

Nature and importance of the employee's role – In your role as General Counsel, you are the chief legal advisor to the Agency. Among other things, OGC lawyers provide legal counsel to EPA policy-makers, shape national legislation affecting the environment, and provide legal support for the issuance of permits, the approval of state environmental programs, and the initiation and litigation of enforcement actions. As General Counsel, you are expected to communicate freely with states, including Florida.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for the FL DEP that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as General Counsel 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 the State of Florida, but not on the very same specific party matters on which you worked on personally and substantially while providing legal services to the FL DEP or while employed with the State of Florida. 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 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 those matters in which you had previously participated unless OGC/Ethics first determines that the Agency's interest in your participation outweighs any impartiality concern and authorizes you to participate.

Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters if necessary. To that end, I understand that you will not participate in any particular matter involving specific parties that are still pending with EPA that you worked on personally and substantially while providing legal services to the FL DEP or employed by Florida. You are cognizant of your attorney bar rules that prohibit you from participating in any matter that is the same as or substantially related to the same specific party matter that you previously participated in personally and substantially, unless your bar provides for and you first obtain informed consent and notify OGC/Ethics.

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

cc: Ryan Jackson, Chief of Staff
Erik Baptist, Senior Deputy General Counsel
David Fotouhi, Deputy General Counsel
Justin Schwab, Deputy General Counsel
Marcella Burke, Deputy General Counsel
Richard L. Albores, Associate Deputy General Counsel
Justina Fugh, Senior Counsel for Ethics

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

OFFICE OF
GENERAL COUNSEL

JAN 11 2018

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Litigation Related to the TSCA Risk Evaluation Rule, TSCA Prioritization Rule, and TSCA Inventory Notification (Active-Inactive) Rule

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

TO: Nancy Beck, Ph.D., DABT
Deputy Assistant Administrator
Office of Chemical Safety and Pollution Prevention

Effective April 30, 2017, you joined the United States Environmental Protection Agency (EPA) in an Administratively Determined (AD) position as the Deputy Assistant Administrator for the Office of Chemical Safety and Pollution Prevention (OCSPP). Prior to your selection, you served as the Senior Director of Regulatory Science Policy at the American Chemistry Council (ACC).

Upon joining EPA, you appropriately consulted with the Office of General Counsel's ethics office (OGC/Ethics) regarding your ethics obligations and have adhered to our advice. As an AD appointee, you understand that you are subject to the federal conflict of interest statutes and the Standards of Ethics Conduct for Employees of the Executive Branch, but you are not required to sign President Trump's ethics pledge set forth at Executive Order 13770.[1] You were advised by OGC/Ethics that you have a "covered relationship" with your former employer pursuant to the federal impartiality standards, and you cannot participate in any specific party matter involving ACC absent approval from OGC/Ethics. This recusal period is in effect until April 21, 2018.

---

[1] This type of appointment falls outside the definition of "appointment" set forth at Executive Order 13770 at Section 2(b). *See* Office of Government Ethics advisories entitled "Guidance on Executive Order 13770," LA-17-03 (March 20, 2017) and "Executive Order 13770," LA-17-02 (February 6, 2017), which apply to the following OGE advisories from the last administration in full: "Who Must Sign the Ethics Pledge?" DO-09-010 (March 16, 2009); and "Signing the Ethics Pledge," DO-09-005 (February 10, 2009).

OGC/Ethics has advised you consistently that you may participate in particular matters of general applicability, including rulemakings, even if the interests of your former employer may be affected by the rule. On June 8, 2017, I issued an impartiality determination authorizing you to attend meetings at which ACC is present or represented, provided that the subject matter of the meeting is a matter of general applicability, other interested non-federal parties are present, and other EPA officials are also in attendance. Consistent with this advice, as Deputy Assistant Administrator for OCSPP you have worked on a wide range of matters as authorized by the federal ethics rules and OGC/Ethics, including the development and promulgation of final agency actions and regulations under TSCA.

Some of the final agency actions and regulations you helped EPA issue were challenged in court. Initially, consistent with the ethics requirements and advice from OGC/Ethics, you assisted in the Agency's defense and litigation efforts in these cases. When the agency was notified that your former employer, ACC had intervened in these lawsuits, you ceased your involvement and sought further ethics advice. We indicated that unless you received an impartiality determination from me, the federal impartiality standards would prohibit you from continuing your work on these specific party matters.

You now request a determination as to whether you may, as part of your official duties, participate personally and substantially in the following litigation where you participated in the promulgation of the final rule while at EPA the ACC has either intervened or filed a motion to intervene:

Case Name	**Citation**	**TSCA Rule**
Alliance of Nurses for Healthy Environments, *et al.* v. EPA; Environmental Defense Fund v. EPA	No. 17-1926 (4th Cir.) No. 17-2464	Risk Evaluation Rule
Alliance of Nurses for Healthy Environments, *et al.* v. EPA	No. 17-1927 (4th Cir.)	Prioritization Rule
Safer Chemicals Healthy Families, *et al.* v. EPA	No. 17-72259 (9th Cir.)	Risk Evaluation Rule
Safer Chemicals Healthy Families, *et al.* v. EPA; Environmental Defense Fund v. EPA	No. 17-72260 (9th Cir.) No. 17-72501	Prioritization Rule
Environmental Defense Fund v. EPA	No. 17-1201 (D.C. Cir.)	Inventory Notification (Active-Inactive) Rule

You do not have any financial conflict of interest with your former employer, so the applicable ethics rules are set forth in the Standards of Ethical Conduct for Executive Branch employees, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Pursuant to 5 C.F.R. § 2635.502(b)(1)(iv), you have a "covered relationship" with ACC

as your former employer. As explained above, for one year from the time you resigned from ACC, absent an impartiality determination from me, you cannot participate in any specific party matter in which ACC is a party or represents a party if that matter is likely to have a direct and predictable effect upon ACC 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 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.

In reviewing these factors, I have decided to allow you to participate fully in these specific party matters. In making this determination, I have taken the following factors into consideration:

- The nature of your relationship with ACC as your former employer but with whom you do not have any financial conflict of interest, as described more fully above, and that the resolution of the litigation is not expected to have an effect on the financial interest of ACC.

- As the Deputy Assistant Administrator for OCSPP, you are responsible for advising the Administrator in matters pertaining to chemical safety, pollution prevention, pesticides and toxic substances, including the development and implementation of rulemakings under federal statutes. Although your type of appointment is not a political one, you currently serve in the only non-career position in OCSPP. As such, you must be able to effectively carry out your role in advising senior agency officials, including the Administrator.

- In your capacity as the Deputy Assistant Administrator for OCSPP, you worked on the TSCA Risk Evaluation Rule, TSCA Prioritization Rule, and TSCA Inventory Notification (Active-Inactive) Rule. As part of your official EPA duties, you were authorized to participate in developing these rules. Your expertise, skill, and experience (including your experience working on these regulations while at the EPA) are needed to

enhance the Agency's litigation efforts and to ensure that you are effectively advising the Administrator, the General Counsel, and career staff.

- All of these specific party matters originated after you left ACC.

- While you still participate in an ACC defined contribution plan, neither you nor your former employer continues to make contributions. Pursuant to federal ethics regulations, this type of employee benefit plan does not present any financial conflict of interest. *See* 5 C.F.R. § 2640.201(c).

After considering the relevant facts of the situation consistent with the factors identified in the federal ethics regulations, I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality and I am authorizing you to participate as Deputy Assistant Administrator in the litigation identified above. This determination will remain in effect for the remainder of your cooling off period, which expires later this year. After April 21, 2018, you will no longer have a covered relationship with ACC under the impartiality standards and will no longer require this determination.

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.

cc: Louise P. Wise, Deputy Assistant Administrator
Justina Fugh, Senior Counsel for Ethics

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

JUN - 8 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Participation in Specific Party Matters Involving Your Former Employer, the American Chemistry Council

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

TO: Nancy Beck, Ph.D., DABT
Deputy Assistant Administrator
Office of Chemical Safety and Pollution Prevention

Effective April 30, 2017, you joined the United States Environmental Protection Agency (EPA) in an Administratively Determined (AD) position as the Deputy Assistant Administrator for the Office of Chemical Safety and Pollution Prevention (OCSPP). In this position, you are responsible for advising the Acting Assistant Administrator in matters pertaining to chemical safety, pollution prevention, pesticides and toxic substances, including implementation of rulemaking under applicable federal statutes. Previous to your selection, you served as the Senior Director of Regulatory Science Policy at the American Chemistry Council (ACC), which represents companies that are directly regulated by EPA. You seek permission to participate in specific party matters involving your former employer.

In providing my advice, I have taken into consideration the fact that, as an AD appointment, you are not required to sign the Trump ethics pledge because this type of appointment falls outside the definition of "appointee" set forth at Executive Order 13,770 at Section 2(b).[1] You do not have any financial conflict of interest with your former employer, so the ethics rules to be applied to you 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." Pursuant to 5 C.F.R. § 2635.502(b)(1)(iv), you have a "covered relationship" with ACC as your former employer. For one year from the time you resigned from ACC, absent an impartiality determination from me, you cannot participate in any specific party matter in which ACC is a party or represents a party if that matter is likely to have a direct and predictable financial effect upon the ACC or if the circumstances would cause a reasonable

[1] *See* Office of Government Ethics advisories entitled "Guidance on Executive Order 13770," LA-17-03 (3/20/27) and Executive Order 13770," LA-17-02 (2/6/17), which apply the following OGE advisories from the last administration in full: "Who Must Sign the Ethics Pledge?" DO-09-010 (3/16/09); and "Signing the Ethics Pledge," DO-09-005 (2/10/09).

person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

It is important to note that the ethical restriction applies only to particular matters involving specific parties, not to particular matters of general applicability. Generally speaking, a "specific party" matter is a "proceeding affecting the legal rights of parties, or an isolatable transaction or related set of transactions between identified parties." *See* 5 C.F.R. § 2640.102(l). Rulemaking is not usually a "specific party" matter but rather a matter of general applicability, which involves "deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons." *See* 5 C.F.R. § 2640.103(a)(1). Therefore, under the ethics regulations, you may participate in rulemaking, even if that rulemaking may affect the members of your former employer. While you can ethically work on rulemaking in general, you have been advised -- and understand – that you cannot participate in any meetings, discussions or decisions that relate to any individual ACC comment nor attend any meeting at which ACC is present.

As provided by the ethics regulations, however, federal ethics officials can nonetheless permit employees to participate in matters that might raise impartiality concerns when the interest of the federal government in that employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." *See* 5 C.F.R. § 2635.502(d). The factors that we can take 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.

In reviewing these factors, I have decided to allow you to participate fully in matters of general applicability, including rulemaking, including consideration of any comments that were made by ACC. In making this determination, I have taken the following factors into consideration:

- While at ACC, you served as the Senior Director of Regulatory Science Policy and worked extensively on risk assessment, science policy and rulemaking issues;
- As ACC's leading expert for ensuring sound implementation of risk assessment practices in the Frank R. Lautenberg Chemical Safety for the 21st Century Act, you have valuable expertise to share as the Agency considers how to implement this new statute;
- You have extensive prior expertise with the regulated industry's perspective and are already familiar with (and may well have authored) ACC comments now under consideration. Because your prior knowledge is inherently part of your expertise, it is impractical to excise that knowledge from how you carry out your Agency duties;

- While you still participate in an ACC defined contribution plan, neither you nor your former employer continues to make contributions. Pursuant to federal ethics regulations, this type of employee benefit plan does not present any financial conflict of interest. *See* 5 C.F.R. § 2640.201(c);
- Your unique expertise, knowledge and prior experience will ensure that the Agency is able to consider all perspectives, including that of the regulated industry's major trade association;
- Although your type of appointment at EPA is not a political one, you currently serve in the only non-career position in the Office of Chemical Safety and Pollution Prevention. As such, you have a unique role in advising political staff, including the Administrator, and need to be able to be able to consider as many perspectives as you can; and
- Participation in rulemaking matters is integral to your position, so the Agency has a strong and compelling interest in ensuring that you are able to advise the Administrator, the Acting Assistant Administrator and career staff to the maximum extent possible.

Under the federal ethics regulations, you are permitted to participate in matters of general applicability (such as rulemaking) even if individual members of your former employer will be affected by that particular matter. Until now, you have recused yourself from participating personally and substantially in those comments to rulemaking that were offered by ACC. This impartiality determination confirms that you are permitted to participate in any discussions or consideration of comments submitted by ACC to rulemaking or other matters of general applicability. You may also attend meetings at which ACC is present or represented, but only if the following conditions are met: (a) the subject matter of the discussion is a particular matter of general applicability, (b) other interested non-federal entities are present besides only ACC, and (c) you are not the only Agency official at the meeting. This authorization will remain in effect for the remainder of your cooling off period. After April 21, 2018, you will no longer have a covered relationship with ACC under the impartiality standards and will no longer require this determination. I am attaching a recusal statement for you to sign and issue to your staff.

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.

Attachment

cc: Wendy Cleland-Hamnett, Acting Assistant Administrator
Justina Fugh, Senior Counsel for Ethics

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

OCT 24 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Specific Party Matters Involving the State of New York, Including the New York State Assembly

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

TO: Peter D. Lopez
Regional Administrator
Region II

On October 10, 2017, I issued an impartiality determination authorizing you to participate in particular matters that affect the State of New York. This determination allowed you to interact with the State of New York, except for the New York State Assembly as an entity. This authorization is attached and hereby incorporated by reference.

You recently asked the Office of General Counsel/Ethics (OGC/Ethics) whether this determination limits you from interacting with members of the New York State Assembly as the elected representatives of their districts or from interacting with chairpersons of New York State Assembly Committees. Based on your October 10, 2017 conversation with OGC/Ethics and upon further consideration of your need to freely interact with the Assembly's elected representatives and legislative committees, I am rescinding the limitation related to the New York State Assembly. Therefore, you are now authorized to interact with the State of New York, including the New York State Assembly, its elected members, and Committee chairpersons.

All other portions of the October 10, 2017 impartiality determination are still in effect for the remainder of your cooling off period. If you have any questions regarding this determination, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786.

cc: Catherine McCabe, Deputy Regional Administrator, Region II
Eric Schaaf, Regional Counsel, Region II
Mitchell Cohen, Regional Ethics Counsel, Region II
Eduardo J. Gonzalez, Regional Ethics Counsel, Region II
Justina Fugh, Senior Counsel for Ethics

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

OCT 10 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Specific Party Matters Involving the State of New York

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

KSM.

TO: Peter D. Lopez
Regional Administrator - Designee
Region II

In anticipation of being appointed as the Regional Administrator for the United States Environmental Protection Agency (EPA) Region II, you sought permission to participate in specific party matters involving the State of New York. Within the last year, prior to being appointed to this position, you served as an elected member of the New York State Assembly.

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, state government is excluded under the definition of "former employer."[1] Therefore, the Ethics Pledge does not apply to your State of New York employment.

Federal ethics rules do not contain a similar exclusion for state governments, and those rules do apply to your employment with the State of New York. In particular, I understand that you have a defined benefit plan with the State of New York. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. In the Agency's experience, it is unlikely that you as the Regional Administrator will be in any position to affect the State's ability or willingness to pay these benefits to its retirees. I do not expect, then, that 18 U.S.C. § 208 will prohibit you from carrying out your official EPA duties. Should you encounter a situation that could raise such a concern at any point in your EPA tenure,

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

please contact our office for additional guidance.

However, 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 the State of New York pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the time you resigned from the New York State Assembly, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of New York is a party or represents a party if that matter is likely to have a direct and predictable effect upon the State 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 will be asked to participate in discussions and meetings related to particular matters that affect New York. 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 the State of New York, but not for any interactions involving the New York State Assembly as an entity. In making this determination, I have taken the following factors into consideration:

<u>Nature of the relationship involved</u> – Since 2007, you served as an elected member of the New York State Assembly (the lower house of the New York State Legislature) representing a seven county region. Although you were a member on the New York Assembly Committee on Environmental Conservation and subsequently involved with state environmental issues, your prior employment was as an elected official, rather than with the state environmental agency. States 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 on a continuing and frequent basis.

Effect of the matter upon your financial interest – I have concluded that there is only a remote possibility that any of EPA's actions will affect the State's ability or willingness to honor its contractual obligations to pay benefits to its retirees. Your actions as the Regional Administrator will not affect any pay-outs you may receive from your retirement plan.

Nature and importance of the employee's role – As the leader of Region II, New York is a substantial area of responsibility for you since the Region covers two states, one commonwealth and one territory. In your role as Regional Administrator, you are expected to communicate freely with states, including New York.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you may be asked to participate, including ones that merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation in nationally significant issues and critical issues facing Region II will be of importance to the Administrator.

While we have issued you this determination to interact with the State of New York, except for the New York State Assembly, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves New York. Nothing in this impartiality determination should preclude you from choosing to recuse yourself, although you are advised to confer with your Regional Counsel should such a circumstance arise. You should also consult with ethics officials if you have any questions about potential matters involving the New York State Assembly as an entity.

This authorization will remain in effect for the remainder of your cooling off period. After one year from the date of your resignation from the New York State Assembly, you will no longer have a covered relationship with the State of New York under the impartiality standards and will no longer require this determination.

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.

cc: Catherine McCabe, Deputy Regional Administrator, Region II
Eric Schaaf, Regional Counsel, Region II
Mitchell Cohen, Regional Ethics Counsel, Region II
Eduardo J. Gonzalez, Regional Ethics Counsel, Region II
Justina Fugh, Senior Counsel for Ethics