



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

FEB 4 2009

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination – NPDES Voluntary Permit Fee Incentive for
Clean Water Act Section 106 Grants

FROM: Patricia K. Hirsch *Patricia K. Hirsch*
Designated Agency Ethics Official
and Acting General Counsel

TO: Lisa P. Jackson
Administrator

You have asked if you can be permitted to participate in a specific party matter involving the State of New Jersey. We understand that the State of New Jersey has joined four other states in a specific party matter involving the EPA's Voluntary Permit Fee Incentive rule.

As you know, you have a "covered relationship" with the State of New Jersey pursuant to 5 C.F.R. § 2635.502(b)(iv) and have agreed to take appropriate steps to avoid an appearance of a loss of impartiality in the performance of your official EPA duties. Government-wide ethics regulations permit federal officials to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern that a reasonable person may question the "integrity of the agency's programs and operations." 5 C.F.R. 2635.502(d). These factors 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) the 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.

With regard to this specific party matter, I have carefully considered the six factors that are listed in 5 C.F.R. § 2635.502(d). I have considered the fact that this particular matter involves not just the state of New Jersey but other states as well, and that it involves a nation-wide regulation that is not limited in application to New Jersey or any other single state.

After reviewing all the factors, I have concluded that the interest of the United States Government in your participation in this particular matter would outweigh any concerns about your impartiality. Given the numbers of parties participating in this matter and the national impact of the regulations at issue, I also conclude a reasonable person would have very little concern over the integrity of EPA actions in light of any prior involvement by you on behalf of New Jersey.

Therefore, you may participate in discussions and meetings related to this particular matter, even though the State of New Jersey is a named specific party. In accordance with your ethics agreement, we understand that you will not participate in any other particular matter that involves the State of New Jersey (or any other of your covered relationships) unless and until you first consult with the Office of General Counsel and obtain a written determination such as this one pursuant to 5 C.F.R. § 2635.502(d).

Please feel free to contact me or Justina Fugh, Senior Counsel for Ethics, if you have any further questions. I can be reached at hirsch.pat@epa.gov or (202) 564-5462; Justina can be reached at fugh.justina@epa.gov or at (202) 564-1786.