



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

OFFICE OF GENERAL  
COUNSEL

**MEMORANDUM**

**SUBJECT:** Impartiality Determination to Participate in the Cleveland Cliffs Variance

**FROM:** Justina Fugh  
Alternate Designated Agency Ethics Official and  
Director, Ethics Office

**TO:** Bruno Pigott  
Deputy Assistant Administrator for Regulatory Affairs  
Office of Water

As Deputy Assistant Administrator for Regulatory Affairs for the Office of Water, you seek permission to participate in a specific party matter involving your former employer, the Indiana Department of Environmental Management (IDEM). Within the last year, prior to being selected for this position as an Administratively Determined appointee, you were the Commissioner of IDEM.

Pursuant to 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," you have a "covered relationship" with IDEM. *See* 5 C.F.R. § 2635.502(b)(1)(iv). For one year from when your employment with IDEM terminated, absent an impartiality determination from me, you cannot participate in any specific party matter in which IDEM is a party or represents a party 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 an impartiality determination, your cooling off period ends on December 3, 2022.

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 we 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 concluded that the interest of the United States Government in your participation in this specific party matter outweighs any concerns about your loss of impartiality. I am therefore authorizing you to participate as Deputy Assistant Administrator for Regulatory Affairs in the Cleveland Cliffs variance, a specific party matter involving your former employer. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since 2017, you have served as Commissioner of IDEM. In this role, you oversaw and managed the state agency whose mission is to protect Indiana's environment and natural resources. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for IDEM. While working for IDEM, you did not work on this variance.

Effect of the matter upon your financial interest – I understand that you have a defined benefit plan and a defined contribution plan with the State of Indiana. 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. But pursuant to the regulatory exemptions, this personal financial interest is not a disqualifying one that raises concerns about participation in particular matters affecting the holdings of the plan or in particular matters of general applicability affecting the sponsor of the plan under the federal conflicts of interest statute. *See* 5 C.F.R. §§ 2640.201(c)(1)(ii) and 2640.201(c)(2). In EPA's experience, it is unlikely that you, as the Office of Water's Deputy Assistant Administrator for Regulatory Affairs, will be in any position to affect the State's ability or willingness to pay benefits to its retirees nor would the Cleveland Cliffs variance specific party matter lend itself to putting you in such a position.

Nature and importance of the employee's role – You were appointed by the Administrator to fulfill a crucial role in the Office of Water. You provide guidance and advice on regulatory affairs directly to the Assistant Administrator for Water, utilizing expertise gained from your prior state government service to inform her decisions and to help the Agency fulfill its objectives. Your unique familiarity with this state's water issues makes it important that you be able to communicate and work freely with the Region and Indiana on this issue.

Sensitivity of the matter – This unique matter has already risen to the Office of Water's senior management, including its political leadership, and therefore merits your participation and insights.

Difficulty of reassigning the matter to another employee – Your participation as Deputy Assistant Administrator for Regulatory Affairs in this matter is required by the Assistant Administrator to inform her of your unique perspective.

Under this limited authorization, you are now authorized to participate in in the Cleveland Cliffs variance only. With respect to any other particular matters involving IDEM as a specific party, you must continue to recuse yourself or seek an impartiality determination from me. This authorization will remain in effect for the remainder of your cooling off period. After December 3, 2022, you will no longer have a covered relationship with IDEM 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 Victoria Clarke at [clarke.victoria@epa.gov](mailto:clarke.victoria@epa.gov) or (202) 564-1149.

cc: Radhika Fox, Assistant Administrator, Office of Water  
Benita Best-Wong, Deputy Assistant Administrator  
Debra Shore, Regional Administrator, Region 5  
Elisabeth Cisar, Senior Advisor, Office of Water