



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

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

AUG 16 2017

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

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

THROUGH: Ryan Jackson
Chief of Staff

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

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

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

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

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

BACKGROUND

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

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

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

MR. BAPTIST’S UNIQUE EXPERTISE

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

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

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

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

REQUEST FOR A LIMITED WAIVER

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

- At the time Mr. Baptist joined the EPA, he was not a federally registered lobbyist. The API formally removed him as a lobbyist on its lobbying disclosure form filed in the first quarter of 2016;
- Mr. Baptist triggered the relatively low threshold to register as a federal lobbyist because as an attorney within the API's Office of General Counsel he provided legal oversight of the API's numerous advocacy activities on the Renewable Fuel Standards program. Mr. Baptist was not an employee of the API's lobbying department;
- The Clean Air Act requires the EPA to issue new renewable fuel percentage standards each year, and Mr. Baptist worked on lobbying activities related to these renewable fuel percentage annual standards. Despite the fact that this regulatory standard is changed annually, the EPA is advised by the Office of Government Ethics that it nevertheless technically falls within the scope of a "specific issue area" as set forth at Section 1, paragraph 7 and requires a waiver;
- Unless and until this limited waiver is granted, Mr. Baptist has recused himself from working on the renewable fuel standards and the RFS program. Granting this limited waiver to allow him to utilize his extensive knowledge and experience in the RFS program will not alter his existing recusal obligations under Section 1, paragraph 6 regarding the API as his former employer; and
- Although Mr. Baptist is listed on the API lobbying disclosure forms for a variety of issues, the EPA seeks this limited waiver only for the Renewable Fuel Standards program.

CONCLUSION

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

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

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

MEMORANDUM

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

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

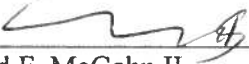
DATE: August 25, 2017

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

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

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

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


Donald F. McGahn II
Counsel to the President

Dated: 25 August 2017