



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb
Governor

INDIANA
STATE ETHICS COMMISSION
Bruno L. Plgott
Commissioner

IC 4-2-6-11

Post-employment waiver

APR 15 2021

FILED

As the Appointing Authority of the Indiana Department of Environmental Management (IDEM), I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Hala Kuss in her post-employment with the United States Environmental Protection Agency (US EPA),

I understand that I must file and present this waiver to the State Ethics Commission at its next available meeting. I further understand that this waiver is not final until approved by the State Ethics Commission.

- A. This waiver is provided pursuant to IC 4-2-6-11(g) and specifically waives the application of the following provisions of IC 4-2-6-11:

IC 4-2-6-11(b)(2): 365 day required "cooling off" period before receiving compensation from an employer for whom the state employee or special state appointee was engaged in the negotiation or administration of a contract and was in a position to make a discretionary decision affecting the outcome of such negotiation or administration.

and

IC 4-2-6-11(c): Particular matter restriction prohibiting the former state employee or special state appointee from representing or assisting a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state worker.

Below is a description of the specific particular matters to which this waiver applies:

1. An unresolved water litigation matter brought jointly by IDEM and US EPA against Cleveland Cliffs Burns Harbor for National Pollutant Discharge Elimination System (NPDES) permit noncompliance at its facility in Burns Harbor, Porter County, Indiana [Case number not yet assigned]. Until her recusal in accordance with a screening protocol, Ms. Kuss, in her capacity as Director of IDEM's Northwest Regional Office (NWRO), substantially participated in this matter. Her participation included assisting with investigating, documenting, and addressing the noncompliance issues and serving on the joint state and federal case team that is handling the enforcement case.
2. An unresolved water litigation case brought jointly by IDEM and US EPA against United States Steel for NPDES permit noncompliance at its facility known as United

States Steel Midwest, located in Portage, Porter County, Indiana [Case 2:18-cv-00127]. Until her recusal in accordance with a screening protocol, Ms. Kuss, in her capacity as IDEM's NWRO Director, participated to a limited degree in this matter. Her participation included aiding in the initial response to a hexavalent chromium release, including aiding with documenting and addressing noncompliance associated with the release, and providing input to the case team when requested.

3. An air litigation case brought jointly by IDEM and US EPA against BP Products North America Inc. for Title V air permit noncompliance at its facility located in Whiting, Lake County, Indiana [Case 2:12-cv-00207-PPS-APR]. The litigation has been resolved through entry of a Consent Decree. The Consent Decree, however, remains open. Until her recusal in accordance with a screening protocol, Ms. Kuss, in her capacity as IDEM's NWRO Director, participated to a limited degree in this matter. Her participation consisted of attending meetings during which the status of BP's compliance with the Consent Decree was discussed, and serving as an intermediate reviewer of enforcement referrals to US EPA for alleged violations of the Consent Decree initiated by the IDEM air inspector with inspection responsibilities for the BP Whiting facility based on his inspection findings and/or his review of deviation reports submitted by BP.
4. An air litigation case brought jointly by IDEM and US EPA against ArcelorMittal USA LLC and ArcelorMittal Burns Harbor LLC for Title V air permit noncompliance at their facilities respectively located in East Chicago, Lake County, Indiana, and Burns Harbor, Porter County, Indiana [Case 2:19-cv-00179]. This litigation has been resolved through entry of a Consent Decree. The Consent Decree, however, remains open. Until her recusal in accordance with a screening protocol, Ms. Kuss, in her capacity as IDEM's NWRO Director, participated to a limited degree in this matter. Her participation consisted of attending some Consent Decree negotiation meetings or other meetings during which this litigation matter was discussed and serving as an intermediate reviewer of enforcement referrals to US EPA for alleged Title V air permit violations initiated by the IDEM air inspectors with inspection responsibilities for these facilities, based on their inspection findings and/or their reviews of deviation reports submitted by these facilities.
5. An air litigation case brought jointly by IDEM and US EPA against SunCoke and Cokenergy for Title V air permit noncompliance at their Indiana Harbor Coke Plant, located in East Chicago, Lake County, Indiana [Case 2:18-cv-00035]. This litigation has been resolved through entry of a Consent Decree. The Consent Decree, however, remains open. Until her recusal in accordance with a screening protocol, Ms. Kuss, in her capacity as IDEM's NWRO Director, participated to a limited degree in this matter. Her participation consisted of attending some Consent Decree negotiation meetings or other meetings during which this litigation matter was discussed and serving as an intermediate reviewer of enforcement referrals to US EPA for alleged Title V air permit violations initiated by the IDEM air inspector with inspection responsibilities for this facility, based on his inspection findings and/or his review of deviation reports submitted by this facility.
6. Six water litigation cases brought jointly by IDEM and US EPA against the City of Anderson [Civil Action No. IP 02-1103 CM/S], the City of Fort Wayne [Civil Action No. 2:07-cv-00445-PPS-APR], the City of Elkhart [Civil Action No. 2:11-cv-00328], the City of South Bend [Civil Action No. 3:11-cv-505], the City of Mishawaka [Civil

Action No. 3:14-cv-281], and the Sanitary District of Hammond [Civil Action No. 2:17-cv-00048], all located in Indiana, for NPDES permit/Clean Water Act noncompliance related to their respective wastewater publicly owned treatment works. Consent Decrees have been entered in these cases, and some remain open. Ms. Kuss has not been involved in these litigation matters in her capacity as IDEM's NWRO Director, thus recusal was unnecessary. However, in her prior role with IDEM, as IDEM legal counsel, Ms. Kuss substantially participated in these matters. Her participation included identification of applicable violations and negotiation of Consent Decree terms.

B. IC 4-2-6-11(g)(2) requires that an agency's appointing authority, when authorizing a waiver of the application of the post-employment restrictions in IC 4-2-6-11(b)-(c), also include specific information supporting such authorization. Please provide the requested information in the following five (5) sections to fulfill this requirement.

1. Please explain whether the employee's prior job duties involved substantial decision-making authority over policies, rules, or contracts:

Ms. Kuss has served in three capacities for IDEM, first as an Attorney in IDEM's Office of Legal Counsel from April 1995 through May 2005, then as an Attorney-Supervisor in IDEM's Office of Legal Counsel from June 2005 through July 2006, and finally, as Director of IDEM's NWRO from August 2006 to the present.

Ms. Kuss' Attorney and Attorney-Supervisor duties did not involve substantial decision-making over policies, rules, or contracts, although Ms. Kuss did aid with the development of various agency policies and did briefly participate in review of agency contracts during her tenure with the Office of Legal Counsel.

Ms. Kuss' NWRO Director duties do not involve substantial decision-making authority over rules or policies, although Ms. Kuss has aided with the development of various agency standard operating procedures and policies. Ms. Kuss' NWRO Director duties also do not involve substantial decision-making over contracts; however, Ms. Kuss has occasionally been called upon to serve as an evaluator of proposals during the procurement process and, as described in Attachment 1, has a role in reviewing agency contracts pertaining to programs that she oversees. None of these contracts, however, have been with US EPA.

However, the duties giving rise to the potential conflict of interest that may trigger the application of the 365-day cooling off period to Ms. Kuss' prospective employment with US EPA pertain to Ms. Kuss' oversight of certain programs, and the staff that coordinate these programs, which are primarily funded through noncompetitive grants issued to IDEM by US EPA. Ms. Kuss' involvement with these noncompetitive grants is extensively described in Attachment 1.

2. Please describe the nature of the duties to be performed by the employee for the prospective employer:

Ms. Kuss' prospective employment is as an attorney in the US EPA Region 5 Office of Regional Counsel. US EPA Region 5 serves a multi-state area that includes Indiana, Illinois, Michigan, Minnesota, Ohio, and Wisconsin. It is Ms. Kuss' understanding that her duties in that position

will primarily consist of representing US EPA in administrative and environmental enforcement related matters. Her duties could also include providing legal advice to US EPA staff on issues not pertaining to administrative and enforcement matters. Ms. Kuss does not anticipate that her US EPA duties will encompass any matters with which she has been involved while employed at IDEM. However, because I believe it would be beneficial to the state of Indiana and to the public for Ms. Kuss to have the ability to be involved in the particular matters described above, should US EPA wish to assign her to these matters, I have included these particular matters within the scope of this waiver.

3. Please explain whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee:

Given that the area served by US EPA Region 5 encompasses Indiana, Ms. Kuss may be assigned to matters that pertain to federal environmental programs administered in Indiana by IDEM, including enforcement actions against facilities located in Indiana for alleged violations of federal environmental laws. In such instances, Ms. Kuss may have contact with IDEM. However, any contact that Ms. Kuss would have with IDEM is highly unlikely to pertain to matters where the agency has the discretion to make decisions based on her work product. Reasons for this include: As an attorney for US EPA, Ms. Kuss' work product will be subject to various privileges; moreover, IDEM has its own legal counsel upon which it relies for legal advice.

4. Please explain whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest:

As an attorney with US EPA, Ms. Kuss will be responsible for providing legal advice and representation to US EPA as it implements and enforces federal environmental laws. As such, a waiver in this case is consistent with the public interest because the prospective employer, US EPA, and IDEM share a common duty to protect human health and the environment. Ms. Kuss, as an employee of US EPA, will be working to protect the environment of the area served by US EPA Region 5, including Indiana, and thus helping to provide a healthy place for Hoosiers to live. Her knowledge of the Indiana environment and her expertise in Indiana state environmental law make her employment with US EPA beneficial to the state and its residents.

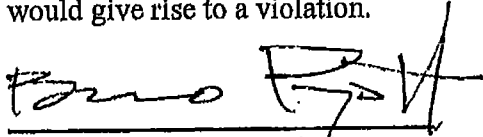
5. Please explain the extent of economic hardship to the employee if the request for a waiver is denied:

Ms. Kuss has resigned her position with IDEM, effective April 23, 2021, and IDEM is moving forward with filling her position. If the waiver is not granted, Ms. Kuss will be unable to initiate employment with US EPA, and the economic hardship that would result to her from being unemployed would be severe.

C. Signatures

1. Appointing authority/state officer of agency

By signing below, I authorize the waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(A). In addition, I acknowledge that this waiver is limited to an employee or special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation.



Bruno L. Pigott, Commissioner
Indiana Department of Environmental Management

3/22/21
DATE

2. Ethics Officer of agency


By signing below, I attest to the form of this waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(B).



Kathleen Mills, Ethic Officer
Indiana Department of Environmental Management

3/22/2021
DATE

D. Approval by State Ethics Commission

FOR OFFICE USE ONLY	
Approved by State Ethics Commission	
	<u>4-15-21</u>
Katherine Noel, Chair, State Ethics Commission	Date

Mail to:
Office of Inspector General
315 West Ohio Street, Room 104
Indianapolis, IN 46202
OR
Email scanned copy to: info@ig.in.gov

Upon receipt you will be contacted with details regarding the presentation of this waiver to the State

Attachment 1

Description of Ms. Hala Kuss' Involvement with Noncompetitive Grants issued to IDEM by US EPA

In her current capacity as Northwest Regional Office (NWRO) Director, Ms. Kuss serves as the intermediate supervisor for fifteen (15) staff, almost all of whom serve as air, land, or water inspectors. In addition, Ms. Kuss serves as the direct supervisor for five staff, two (2) of whom serve as program coordinators. The two program coordinators oversee the following Lake Michigan focused programs, which, collectively, are referred to by IDEM as "The Lake Michigan Programs:" The Lake Michigan Beach Monitoring & Notification Program, the Clean Marina/Clean Boater Program (within the Lake Michigan Basin), the Lake Michigan Lakewide Action & Management Plan Program (LAMP) and the Grand Calumet River/Indiana Harbor Ship Canal Area of Concern Remedial Action Plan Program (RAP). The two primary sources of funding for administration of these programs are recurring, noncompetitive federal grants issued by US EPA. These grants are known as the BEACH Act grant and the LAMP/RAP Management Assistance grant. IDEM Finance Office staff submit applications for these grants to US EPA and serve as the official project managers for all awarded grants.

US EPA began issuing annual noncompetitive BEACH Act grants some time prior to Ms. Kuss becoming the NWRO Director. US EPA issued the most recent grant in November 2020. The BEACH Act grant funding allocated to each eligible state is determined through a funding formula established by US EPA. The annual BEACH Act grants fund a portion of the compensation for one of the two program coordinator positions overseen by Ms. Kuss, hereinafter referred to as program coordinator 1. However, the compensation for program coordinator 1, both with regard to salary and benefits, is exclusively determined by IDEM and the State Personnel Department ("SPD"). In addition, the BEACH Act grants fund E.coli monitoring and notification activities at participating Indiana Lake Michigan beaches during the swim season, as well as Beach program supplies, such as education and outreach materials and beach water quality notification signage. IDEM, in turn, passes funding through to the eligible entities with jurisdiction over Indiana Lake Michigan Beaches, to be used to conduct beach E.coli monitoring and notification activities. This is done annually through contracts [and in the case of the Indiana Dunes State Park beaches managed by the Indiana Department of Natural Resources ("DNR"), through an MOA]. IDEM can also enter into agreements with other entities to carry out work called for in the grant work plan, subject to all state of Indiana procurement requirements.

Ms. Kuss' role with regard to the BEACH Act grants has encompassed the following:

- (1) Review of the work plan that is included with the annual grant funding application submitted by IDEM to US EPA. The work plan describes the work to be accomplished with the grant funds and is prepared by program coordinator 1. The remaining portions of the grant application are prepared by IDEM's Finance Office, with assistance from program coordinator 1, as needed.
- (2) Review of periodic progress reports that describe the status of the work to be accomplished under the grant. These reports are prepared by program coordinator 1 and are submitted directly by program coordinator 1 to the US EPA grant officer.

- (3) Review of the final technical report that is included with the grant close out packet. The report describes the work accomplished under the grant and is prepared by program coordinator 1. The remaining portions of the grant close out packet are prepared by IDEM's Finance Office, with assistance from program coordinator 1, as needed.
- (4) Review of any no cost time extensions, work plan changes, or grant budget allocation changes (for example, proposed movement of grant funds from the "personnel" to the "supply" object category) proposed by program coordinator 1. Note that requested changes that affect the grant budget and require US EPA approval must first be reviewed and approved by IDEM's Finance Office.
- (5) Review of requisitions for items included in the grant work plan. Note that Ms. Kuss is one of several reviewers and does not have ultimate decision-making authority over these requisitions.
- (6) Review of MOAs and contracts between IDEM and the entities with jurisdiction over the beaches eligible for BEACH Act funding as well as any agreements between IDEM and other entities to carry out work called for in the grant work plan. Note that all MOAs and contracts are additionally reviewed by IDEM Legal Counsel and the IDEM Senior Management official authorized to sign these agreements on behalf of the agency. Ms. Kuss is not a signatory to these agreements.
- (7) Participation in discussions regarding any compliance or implementation issues that program coordinator 1 may encounter while overseeing the agreements referenced in item 6 above. Note that IDEM Legal Counsel is included in all such discussions.
- (8) General supervisory oversight over program coordinator 1. This includes review of time coding and preparation of employee goal plans and performance appraisals. The appraisals are reviewed by Ms. Kuss' supervisor and by IDEM Human Resources staff prior to finalization.

US EPA typically issues noncompetitive LAMP/RAP Management Assistance grants in three-year cycles and has done so since prior to Ms. Kuss' tenure as NWRO Director. US EPA issued the most recent grant in April 2019. The LAMP/RAP Management Assistance grant funding allocated to each eligible state is determined through a funding formula established by US EPA. The LAMP/RAP Management Assistance grant fully funds the compensation associated with one of the program coordinator positions overseen by Ms. Kuss, hereinafter referred to as program coordinator 2, and funds the remainder of the compensation for program coordinator 1, i.e., the portion of compensation for program coordinator 1 not covered by the BEACH Act grant. However, the compensation for program coordinator 1 and 2, both with regard to salary and benefits, is exclusively determined by IDEM/SPD. Additionally, a percentage of time Director Kuss spends overseeing program coordinator 1 and 2 is eligible to be coded to these noncompetitive grants. However, her salary and benefits are exclusively determined by IDEM/SPD and are in no way dependent upon the availability of these noncompetitive grants from US EPA.

In addition, LAMP/RAP Management Assistance grants fund some items and activities conducted in furtherance of Lake Michigan Programs' goals, such as education and outreach activities and supplies, development of a beach monitoring and notification system for the Lake Michigan beaches, development of a predictive model that can be used to forecast E.coli concentrations at various Indiana Lake Michigan beaches, and water quality and/or fish tissue monitoring work. IDEM in turn, passes through funding to DNR, via an MOA, to carry out work within its purview that falls within the scope of the LAMP/RAP Management Assistance grant. IDEM can also enter into agreements with other entities to carry out work called for in the grant work plan, subject to all state of Indiana procurement requirements.

Ms. Kuss' role regarding the LAMP/RAP Management Assistance grants has encompassed the following:

- (1) Review of the work plan that is included with the grant funding application submitted by IDEM to US EPA. The work plan describes the work to be accomplished with the grant funds and is prepared by program coordinator 1 or 2. The remaining portions of the grant application are prepared by IDEM's Finance Office, with assistance from program coordinator 1 or 2, as needed.
- (2) Review of periodic progress reports that describe the status of the work to be accomplished under the grant. These reports are prepared by program coordinator 1 or 2 and are submitted directly by the program coordinator to the US EPA grant officer.
- (3) Review of the final technical report that is included with the grant close out packet. The report describes the work accomplished under the grant and is prepared by program coordinator 1 or 2. The remaining portions of the grant close out packet are prepared by IDEM's Finance Office, with assistance from program coordinator 1 or 2, as needed.
- (4) Review of any no cost time extensions, work plan changes, or grant budget allocation changes proposed by program manager 1 or 2. Note that requested changes that affect the grant budget and require US EPA approval must first be reviewed and approved by IDEM's Finance Office.
- (5) Review of requisitions for items included in the grant work plan. Note that Ms. Kuss is one of several reviewers and does not have ultimate decision-making authority over these requisitions.
- (6) Review of the MOA between IDEM and DNR in which grant funds are passed to DNR for work within its purview that falls within the scope of the LAMP/RAP Management Assistance grant, as well as any agreements between IDEM and other entities to carry out work called for in the grant work plan. Note that all MOAs and contracts are additionally reviewed by IDEM Legal Counsel and the IDEM Senior Management official authorized to sign the MOAs and contracts on behalf of the agency. Ms. Kuss is not a signatory to these MOAs or other agreements.
- (7) Participation in discussions regarding any contract compliance or contract implementation issues that program coordinator 1 or 2 may encounter while overseeing the agreements referenced in item 6 above. Note that IDEM Legal Counsel is included in all such discussions.

- (8) General supervisory oversight over program manager 1 and 2. This includes review of time coding and preparation of employee goal plans and performance appraisals. The appraisals are reviewed by Ms. Kuss' supervisor and by IDEM Human Resources staff prior to finalization.

In addition to the two types of recurring, noncompetitive federal grants referenced above, US EPA issues to IDEM non-recurring, noncompetitive federal grants, referred to as direct funding grants, for work conducted in furtherance of the Lake Michigan Programs' goals. IDEM Finance Office staff submit applications for these grants to US EPA and serve as the official project managers for all awarded grants. The amounts of the direct funding grants are determined by US EPA based on the cost of the work projected by IDEM.

During Ms. Kuss' tenure as NWRO Director, US EPA issued the following six (6) direct funding grants to IDEM, the most recent of which was issued in April 2018:

Two (2) "habitat restoration grants" for restoring of over 1000 acres of dune and swale habitat within the Grand Calumet River Area of Concern.

One (1) grant for conducting microbial source tracking of E.coli contamination and conducting sanitary surveys at Indiana's Lake Michigan beaches.

Two (2) "nuisance shorebird deterrence" grants for implementing measures designed to reduce E.coli exceedances at beaches located within the Grand Calumet River/Indiana Harbor Ship Canal Area of Concern primarily through control of nuisance shorebirds (gulls) found to be a primary contributor of E.coli contamination.

One (1) grant for conducting monitoring to determine the health of plankton populations within the Grand Calumet River/Indiana Harbor Ship Canal Area of Concern.

Of these direct funding grants, only one nuisance shorebird deterrence grant and one habitat restoration grant remain open. Ms. Kuss' role regarding direct funding grants is the same as it is for the grants previously described in this attachment.