

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
February 11, 2021**

**I. Call to Order**

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. The meeting was held virtually using Microsoft Teams. Commission members present were Katherine Noel, chair; Corinne Finnerty; Sue Anne Gilroy; and Kenneth Todd. Staff present included David Cook, Inspector General; Tiffany Mulligan, Chief Legal Counsel, Office of Inspector General; Jennifer Cooper, State Ethics Director; Kelly Elliott, Staff Attorney, Office of Inspector General; Luba Gore, Staff Attorney, Office of Inspector General; Cindy Scruggs, Administrative Director, Office of Inspector General; Mark Mitchell, Director of Investigations, Office of Inspector General; Mike Lepper, Investigator, Office of Inspector General; and Nathan Baker, Legal Assistant, Office of Inspector General.

Others present were: Deana Smith, Ethics Officer, Indiana State Department of Health; Tammera Glickman, Deputy General Counsel, Indiana Department of Administration; Sylvia Watson, General Counsel and Ethics Officer, Indiana State Library; Latosha N. Higgins, Managing Attorney/Ethics Officer, Family and Social Services Administration; Mattheus Mitchel, Compliance & Ethics Specialist, Indiana Department of Revenue; Beth Green, General Counsel & Ethics Officer, Indiana Department of Workforce Development; Jessica Allen, Executive Secretary and Ethics Officer, Alcohol & Tobacco Commission; Kristi Shute, Deputy General Counsel and Ethics Officer, Indiana Department of Homeland Security; Amy Owens, Staff Attorney, Indiana Department of Health; Amber Nicole Ying, Special Counsel/Director, Compliance and Ethics and Ethics Officer, Department of Revenue; Rachel Russell, Interim General Counsel and Ethics Officer, Department of Child Services; David Johnson, Office of Attorney General; Lindsay Hyer, Commission Counsel, Alcohol and Tobacco Commission; Tamara Smith, Admissions & Policy Director/Ethics Officer, Indiana Veterans Home; Joby Johnson, Chief Mine Inspector, Department of Labor - Department of Mines; Ed Feigenbaum, Indiana Legislative Insight; Breanca Merritt, FSSA, Chief Health Equity and ADA Officer; Joseph B. Hoage, Commissioner, Department of Labor; and J. Anthony Hardman, General Counsel/Ethics Officer; Department of Labor.

**II. Adoption of Agenda and Approval of Minutes**

Commissioner Gilroy moved to adopt the Agenda and Commissioner Todd seconded the motion which passed (4-0).

Commissioner Finnerty moved to approve the Minutes of the January 21, 2021 Commission Meeting and Commissioner Gilroy seconded the motion which passed (4-0).

### **III. Consideration of Waiver of Post-Employment Restrictions for Joby Johnson**

Joseph B. Hoage, Commissioner of the Department of Labor; and J. Anthony Hardman, General Counsel/Ethics Officer of the Department of Labor., presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Gilroy moved to approve the Waiver, and Commissioner Todd seconded the motion which passed (4-0).

### **IV. Request for Formal Advisory Opinion**

2021-FAO-004

Dr. Breanca Merritt, Chief Equity and ADA Officer

Latosha N. Higgins, Managing Attorney and Ethics Officer

Family and Social Services Administration

Latosha Higgins is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Higgins is requesting an advisory opinion on behalf of Dr. Breanca Merritt, the new Chief Equity and ADA Officer for FSSA. Specifically, Ms. Higgins is requesting an opinion from the Commission addressing whether it would be a conflict of interests for Dr. Merritt to continue her outside academic, community service and consulting activities while employed as the Chief Equity and ADA Officer for FSSA.

Dr. Merritt joined FSSA in January 2021 as the first Chief Health Equity and ADA Officer, a recently-created position that reports directly to FSSA's Secretary, Dr. Jennifer Sullivan. Dr. Merritt's responsibilities include leading the FSSA Office of Healthy Opportunities, providing leadership in the evaluation of policy decisions that affect race equity, building metrics for agency accountability, ensuring agency adherence to the Americans with Disabilities Act (ADA) and serving at the executive level, working to build a culture of equality across the agency. Her role also may include activities such as assisting with identifying contractors or developing language for requests for proposals during the procurement process; however, other staff in the FSSA executive office who do not report to Dr. Merritt would oversee procurements. Dr. Merritt's role in this situation would be to serve as a subject matter expert.

Before joining FSSA, Dr. Merritt served as the founding director of the Center for Research on Inclusion and Social Policy at Indiana University Purdue University - Indianapolis (IUPUI). She was also a clinical assistant professor in IUPUI's O'Neill School of Public and Environmental Affairs and adjunct faculty for the Africana Studies program. She continues to have an affiliation with IUPUI, serve on external boards and serve as a paid consultant. Except for one existing contract with the Urban League, Dr. Merritt's activities generally do not include any compensation.

Dr. Merritt is a frequently sought-after speaker because of her expertise in the areas of social policy, vulnerable populations and racial equity. While many of her speaking requests may be directly related to her FSSA work, she likely will receive requests unrelated to her work with FSSA. Dr. Merritt would like to accept future offers to speak. Dr. Merritt has advised Ms.

Higgins that the speaking engagements seldom include an honorarium. She is aware of the need to be cognizant of potential conflicts of interests when accepting speaking engagements.

Dr. Merritt is also interested in continuing her involvement with the Indianapolis Public Schools (IPS) and Central Indiana Community Education Foundation. Her involvement includes participating in regular meetings to discuss equity and policy making among students and families with IPS and discussing the criminal justice system and equity with the Central Indiana Community Foundation. Although she committed to these obligations before joining FSSA in the context of her prior role, the responsibilities intersect with her current role as they relate to equity and public policy. Dr. Merritt is not compensated for her involvement with IPS or the Central Indiana Community Education Foundation.

FSSA has an agreement with IPS in which IPS provides educational services to school-age students who are residents at the Neuro Diagnostic Institute. Dr. Merritt was not involved in the negotiation of this agreement nor is she involved in the oversight of the agreement. FSSA entered into the agreement with IPS before Dr. Merritt joined FSSA. FSSA's Division of Mental Health and Addiction administers the agreement. FSSA does not have any business relationship with the Central Indiana Communication Education Foundation.

Dr. Merritt's other obligations include serving on the board of the following organizations: Fair Housing Center of Central Indiana, Hawthorne Community Center (Hawthorne), Blueprint Council Continuum of Care Indianapolis and the Thomas Gregg Neighborhood School. Except for the Blueprint Council Continuum of Care for Indianapolis and Thomas Gregg Neighborhood School, the board meetings for these organizations occur outside of her regular work hours. For meetings that occur during her regular work hours, Dr. Merritt will either join the meeting later or make up the time by working later those days. Dr. Merritt does not receive any compensation for serving on any of these boards.

Of the organizations where Dr. Merritt serves on the board, only Hawthorne has a business relationship with FSSA. In July 2019, Hawthorne received a grant from FSSA to be used for its School Age Care Project. The grant award is administered by the FSSA Office of Early Childhood and Out of School Learning. FSSA made the award to Hawthorne before Dr. Merritt joined FSSA. Furthermore, Dr. Merritt is not involved with the administration of this grant.

Dr. Merritt also would like to continue in her role as an associate member of the faculty in the IUPUI School of Liberal Arts Africana Studies Program and Community Scholar for the Africana Studies Program and to serve on the advisory board of their new Center for Africana Studies and Culture.

Dr. Merritt's appointment as a Community Scholar is a renewable three-year honorary appointment that commenced on January 1, 2021. Community Scholars are expected to make contributions to meeting educational objectives for IUPUI students through community-based learning activities, research or professional service, such as being a guest speaker. It is an unpaid appointment where she will be entitled to participate in research and to access other university facilities. The appointment does not involve any instructional or financial

commitments. It is not tenured, and it does not confer any voting rights or other benefits accruing to other faculty. Although the Community Scholar appointment does not require teaching, Dr. Merritt is interested in teaching. Any potential teaching obligations would require 1.5 hours a week during the work week for 13 weeks. She would ensure future courses were scheduled outside work hours.

Dr. Merritt also has a few manuscripts under review by peer-review journals and under her affiliation with IUPUI. Any minor work Dr. Merritt completes on those projects after submission will be completed after hours and on weekends. She also has a team of students and staff leading work on a project that she passed on to them before joining FSSA. She likely will need to meet with them monthly until August 2021. She will limit her interactions with this team to after hours.

Lastly, Dr. Merritt is a contracted consultant with the Urban League Indianapolis African American Quality of Life Initiative team. As with her other outside activities, she plans to complete the work required under this one-year agreement outside of her regular work hours. Her compensation for this work does not come from any state contract or grant.

Dr. Merritt understands that she is not to use her FSSA position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government. She also understands and agrees to abide by the Code governing conflicts of interests, ghost employment, use of state property and confidential information.

Based on the information presented, Ms. Higgins has determined that Dr. Merritt's outside activities do not appear to be incompatible with her duties. Rather, Dr. Merritt's outside activities will help maintain and build upon her professional skills such that she may better be able to meet the essential functions of her position such as developing and expanding community collaborations related to racial equity; learning about equity-related innovations relevant to FSSA; and developing increased knowledge about trends across the State of Indiana.

The analysis stated the following:

Ms. Higgins' request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Conflicts of Interests, Use of State Property, Ghost Employment, Honoraria and Benefitting from and Divulging Confidential Information. The application of each provision to Dr. Merritt is analyzed below.

#### *A. Outside employment*

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5 if it results in the employee: 1) receiving compensation of substantial value if the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require the employee's recusal from matters so central or

critical to the performance of her official duties that her ability to perform them would be materially impaired; 2) disclosing confidential information that was gained in the course of state employment; or 3) using or attempting to use her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

The Commission generally defers to an agency's ethics officer regarding outside employment opportunities because these individuals are in a better position to determine whether a conflict of interests might exist between an employee's state duties and an outside employment opportunity. Based on the information and opinion provided by Ms. Higgins, Dr. Merritt's employment as a consultant with the Urban League of Indianapolis, African American Quality of Life Initiative team would not create a conflict under this provision. According to Ms. Higgins, Dr. Merritt's responsibilities under this contract would not conflict with her responsibilities in her position at FSSA and would not require her to recuse herself from matters that are critical to the performance of her FSSA duties.

Her other outside employment/professional activities would not provide Dr. Merritt with compensation of substantial value. There is the possibility that Dr. Merritt could receive an honorarium for a speaking engagement on occasion. If that is the case, she will need to be mindful of the honoraria rule (42 IAC 1-5-) discussed later in this opinion.

The Commission confirmed that Dr. Merritt would not be required to disclose confidential information that she may have access to by virtue of her state employment in any of her outside positions.

Further, Ms. Higgins provides that Dr. Merritt is aware that she must not use or attempt to use her state position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government.

The Commission finds that Dr. Merritt's outside employment/professional activities in serving as a consultant, as a board member for the various organizations for which she volunteers, in her academic position and affiliation with IUPUI, and in working on her manuscripts would not create a conflict of interests for her under IC 4-2-6-5.5.

#### *B. Conflict of interests - decisions and votes*

IC 4-2-6-9 (a)(1) prohibits Dr. Merritt from participating in any decision or vote, or matter relating to that decision or vote, if she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits Dr. Merritt from participating in any decision or vote, or matter relating to that decision or vote, if a business organization in which she serves as an employee or member has a financial interest in the matter.

IC 4-2-6-9(b) requires that a state employee who identifies a potential conflict of interests notify her agency's appointing authority and ethics officer in writing and either (1) seek a formal advisory opinion from the Commission; or (2) file a written disclosure form with the OIG.

Dr. Merritt serves as the Chief Equity and ADA Officer for FSSA and wishes to continue her outside employment/professional activities with various organizations, including IPS and Hawthorne, both of which have a business relationship with FSSA through a contract and grant, respectively. Dr. Merritt had no involvement in the contract negotiations with IPS, and she will not be involved in the administration/oversight of this contract at FSSA. The contract is administered by FSSA's Division of Mental Health and Addiction. Dr. Merritt also was not involved in the FSSA grant award to Hawthorne, and she is not involved in its administration at FSSA.

Based on Ms. Higgins' description of Dr. Merritt's role as Chief Equity and ADA Officer for FSSA, it appears that Dr. Merritt's responsibilities will be focused on creating policy and a culture of equality at FSSA at the executive level and that she would not be involved in decisions/votes in which any of the organizations with which she has an outside employment/professional activity position would have a financial interest.

Accordingly, the Commission finds that Dr. Merritt does not have an identified potential conflict of interests at this time; however, if a potential conflict of interests is identified in the future, Dr. Merritt must meet the disclosure and notification requirements in IC 4-2-6-9(b).

#### *C. Conflict of interests – contracts*

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by an agency. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between the state and a third party.

This prohibition, however, does not apply to an employee that does not participate in or have contracting responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

Although Dr. Merritt would receive compensation for her outside consulting work with the Urban League of Indianapolis, Ms. Higgins provides that Dr. Merritt would not be compensated from any funds derived from any state contract or grant.

Accordingly, the Commission finds that Dr. Merritt would not have a financial interest in a state contract.

#### *D. Honoraria*

The honoraria rule, 42 IAC 1-5-3, prohibits state employees from personally accepting an honorarium for any activity that may be considered part of the state employee's official duties. The definition of "honorarium" includes a payment of money for an appearance, a speech or an article but excludes payment or reimbursement for travel expenses.

The general prohibition on honoraria does not apply to employees for activities not done in connection with the employee's official duties and that are prepared on the employee's own time and without the use of state resources; however, regardless of whether the activity is done in connection with the state employee's official duties, the employee may not accept an honorarium from a person who has a business relationship or seeks to influence an official action with the employee's agency.

To the extent that Dr. Merritt is ever offered an honorarium for any of her public speaking engagements or articles, she could not personally accept the honorarium if it was for an activity that is part of her official duties. She could, however, accept the honorarium on behalf of the State and remit the funds to the Treasurer of State.

If the honorarium was offered for an appearance, speech or article that falls outside of her official duties, Dr. Merritt could personally accept the honorarium so long as the person offering it does not have a business relationship with or is seeking to influence an official action from FSSA.

The Commission requested that Dr. Merritt and FSSA keep a written record of any honoraria received by Dr. Merritt that relate to any of her outside employment/professional activities for transparency purposes.

#### *E. Confidential information*

Dr. Merritt is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from or divulging information of a confidential nature except as permitted or required by law. Similarly, IC 4-2-6-6 prohibits Dr. Merritt from accepting any compensation from any employment, transaction or investment which is entered into or made as a result of material information of a confidential nature. The term "person" is defined in IC 4-2-6-1(a)(13) to encompass both an individual and an organization. In addition, the definition of "information of a confidential nature" is set forth in IC 4-2-6-1(a)(12).

To the extent Dr. Merritt is exposed to or has access to such confidential information in her position as Chief Equity and ADA Officer for FSSA, she is prohibited not only from divulging that information but from ever using it to benefit any person, including any of her outside employers, in any manner.

#### *F. Use of state property and Ghost employment*

42 IAC 1-5-12 prohibits Dr. Merritt from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation that the Commission has approved. Likewise, 42 IAC 1-5-13 prohibits Dr. Merritt from engaging in, or directing others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental or institutional policy or regulation.

Due to the significant number of outside employment/professional activity positions that Dr. Merritt wishes to continue to hold, and the fact that Ms. Higgins provided that some of these positions will require her time/attention during her normal FSSA working hours, the Commission determined that Dr. Merritt should keep an accurate and detailed record (e.g. a log) of the time she spends volunteering or working in her outside positions to minimize any appearance that she may be completing this work on state time and to minimize or eliminate any confusion as to which role she is fulfilling at any given time.

To the extent that Dr. Merritt observes these provisions regarding her outside employment/professional activities, her outside positions would not violate these ethics laws.

Commissioner Todd moved to approve the Commission's findings, and Commissioner Gilroy seconded the motion which passed (4-0).

#### **V. Director's Report**

State Ethics Director, Jen Cooper, stated that since the last Commission meeting, the Office of Inspector General had issued 10 informal advisory opinions with the majority of opinions on the subjects of post-employment restrictions, conflicts of interests, outside employment, and gifts.

Director Cooper also reported that the Financial Disclosure Statement filing period for required filers for 2020 has been completed with all required filers accounted for as of this meeting.

Additionally, it was announced that David Cook had been appointed by Governor Holcomb as the new Inspector General. Inspector General Cook took a moment to introduce himself to the Commissioners. He also praised the OIG staff and expressed his gratitude for the opportunity to serve as Inspector General.

Finally, Commissioner Gilroy expressed the Commission's gratitude for the OIG team for how smoothly the SEC meetings have gone since the beginning of the Covid-19 pandemic.

#### **VI. Adjournment**

Commissioner Todd moved to adjourn the public meeting of the State Ethics Commission and Commissioner Finnerty seconded the motion, which passed (4-0).

The public meeting adjourned at 10:21 a.m.





# INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We Protect Hoosiers and Our Environment.*

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Eric J. Holcomb  
Governor

Bruno L. Pigott  
Commissioner

## IC 4-2-6-11

### Post-employment waiver

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.

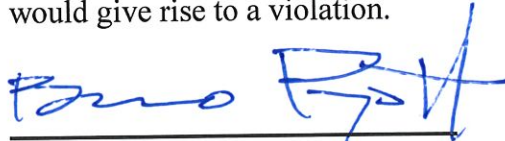
5. Please explain the extent of economic hardship to the employee if the request for a waiver is denied:

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

\_\_\_\_\_  
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](mailto:info@ig.in.gov)

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

## 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.