

November 5, 2015

MEMORANDUM TO: Ethics File

FROM: Eric Michel, Attorney
Office of the General Counsel
Deputy Ethics Counselor

This memorializes the analysis of NRC employee Antonio Rigato's request to engage in outside employment as an engineer with Stantec Consulting Services, Inc (Stantec). Prior approval is required by 5 CFR 5801.103(a)(1) and (a)(6) because Stantec is both a Commission licensee and a holder of Agreement State licenses for the possession and use of portable gauges. Under 5 CFR 5801.103(c) and Management Directive 7.8, outside approval can only be granted upon a determination by the EDO that the proposed outside employment would not violate a federal statute, regulation, or NRC policy. This memorializes the view of the OGC ethics team that this proposed outside activity would not violate an ethics statute or regulation.

FACTS

Stantec is an international company that provides technical consulting services, such as design, engineering, architecture, and environmental services, across a wide array of disciplines and industries. Stantec is the holder of NRC license 47-35105-01, which authorizes the possession and use of Cesium 137 and Americium 241 sealed sources within Troxler portable gauging devices. These gauges are used for the measuring of physical properties of materials and are common throughout the construction industry.

The employee is a technical reviewer in the Containment Structural and Thermal Branch of the Spent Fuel Management division in the Office of Nuclear Material Safety and Safeguards. As such, the employee's official NRC duties pertain to review of the structural and mechanical aspects of spent fuel storage and transportation. The employee's proposed work at Stantec would be unrelated to these duties, and would relate to the inspection and design of bridges. The employee has stated that this bridge work would not involve the use of the company's nuclear gauges or any licensing activities associated with the gauges.

An overview of Stantec's website does not reveal any connection to construction or design of spent fuel storage or transportation projects. In fact, there is no indication that Stantec is engaged in the commercial nuclear industry. Stantec's website has a page displaying 51 of the company's prominent "Power & Energy Projects,"¹ none of which appear related to the nuclear fuel cycle.

ANALYSIS

Ethics regulations prohibit NRC employees from engaging in outside activities, compensated or not, that "conflict" with their official duties. A conflict exists if the activity is prohibited by law, or if the activity would require the employee to recuse himself from matters "central and critical" to his official duties, such that the employee's ability to perform his official duties would be

¹ See <http://www.stantec.com/our-work/sectors/power-and-energy-services/projects.html>. These projects include construction of electric distribution and transmission lines, renewable projects such as wind and solar farms, dam restoration, and oil and gas energy projects.

Enclosure

materially impaired. 5 C.F.R. § 2635.802. Outside activity can create recusal obligations for an employee in two ways: (1) the employee could obtain a *financial interest*, requiring that the employee recuse himself from particular matters that would affect that interest; or (2) the employee may be required to recuse himself from working on particular matters out of *impartiality* concerns if such matters specifically involve persons or businesses with whom he associates outside of work (i.e., a "covered relationship").

If the employee were to accept a position with Stantec, the financial interests of Stantec would be imputed to him. See 5 C.F.R. § 2635.402(b)(2)(iv) (treating the financial interests of an outside employer as the same as that of the employee). This means that the employee would be prohibited by law from participating "personally and substantially" in an official capacity in any "particular matter" in which the employee knows will have a "direct and predictable effect" on the financial interests of Stantec. 18 U.S.C. § 208; 5 C.F.R. § 2635.402(a). This is not limited to specific matters involving Stantec, such as a license amendment or application, but can also extend to more general matters such as rulemaking or guidance document development that financially affect a discrete class of entities if Stantec is a member of that discrete class.

As stated above, it does not appear that Stantec currently engages in any design, construction, or engineering activities in the commercial nuclear field. Stantec is not on the NRC prohibited securities list nor is it part of the Nuclear Supplier's Association. The company's use and possession of nuclear materials is limited to its portable gauges and is an incidental portion of its business. Thus, on its face this proposal for outside employment does not raise financial conflict of interest concerns. However, were the employee to accept a position, he would be under a continuing obligation for the duration of employment to remain aware as to whether Stantec engages in commercial nuclear activities. If the company were to engage in such activities, or if the company's degree of interaction with the agency were to change in the future, an ethics reevaluation would necessarily be required to determine whether the employee's official NRC duties have a direct and predictable effect on Stantec's financial interests. This reevaluation would be necessary regardless of whether the employee's part-time duties at Stantec do not relate to the company's nuclear activities.

Additionally, if the employee were to accept a position with Stantec, the employee would have a "covered relationship" with Stantec for purposes of the impartiality conflict of interest regulations. See 5 C.F.R. § 2635.502(b)(1)(iv) (defining "covered relationship" to include any person for whom the employee has worked in the previous year). This prohibition largely overlaps with the financial conflict of interest prohibition analyzed above, but goes one step further—the employee would be prohibited from working on any specific matter involving Stantec, or a specific matter where Stantec represents another individual, even if that specific matter does not have a direct and predictable effect on Stantec's financial interests. Once again, as stated above, it does not appear that Stantec currently engages in activities where it will find itself involved in specific matters with the NRC, much less the Spent Fuel Management division of NMSS. Thus, the request does not, on its face, pose an impartiality conflict of interest concern.

Lastly, the employee has stated, consistent with the ethical restrictions concerning "misuse of position," that he would perform all proposed work with Stantec on personal time, without using government resources or non-public information. See 5 C.F.R. 2635.701.

CONCLUSION

Because (1) Stantec's only association with the NRC appears to be its license to possess and use portable gauges, and the company does not appear to be engaged otherwise in the

commercial nuclear field; (2) neither the employee's official NRC duties or proposed duties at Stantec will involve the use or licensing of those gauges; and (3) there do not appear to be any conflict of interest concerns, financial or otherwise, presented by the request, we believe this proposed activity would not violate an ethics statute or regulation. However, this employee would be under a continuing obligation to remain aware as to whether Stantec is performing work in the commercial nuclear field. If Stantec performs such work, there would necessarily need to be a reevaluation as to whether the employee would be prohibited by criminal statute or ethics regulation from continuing to work at Stantec, based on a financial conflict of interest or appearance of impartiality.