

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

December 11, 1990



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Act, exemptions 6
FOIA- 2002-0360

Dear [redacted]

This is in response to your letter of November 28 in which you requested clarification as to the permitted post-employment opportunities of [redacted]

At this time, [redacted] is free to accept employment in the private sector as a consultant in the area of high level waste. However, [redacted] will be subject to the post-employment restrictions set forth in 18 U.S.C. 207. Those restrictions are described in the enclosed October 26, 1990 memorandum prepared by the Office of Government Ethics (OGE). I call to your attention two particular provisions--18 U.S.C. 207(a) and 207(c). I will address the latter provision first.

18 U.S.C. 207(c) will prohibit [redacted] for one year after terminating his NRC employment from meeting or communicating with the NRC on behalf of a private party on any matter with the intent to influence agency action. This ban extends to matters in which [redacted] did not participate as an NRC employee. I have discussed the scope of this provision with [redacted]

The application of 18 U.S.C. 207(a) is more troublesome. That section bars for life former federal employees from representing a private party before any federal agency on any particular matter involving parties in which the individual personally and substantially participated as a federal employee. The challenging issue here is how this proscription applies to the development of a high-level waste repository, a matter upon which [redacted] has spent a considerable amount of time as a NRC employee. Several representatives of the Office of the General Counsel, including myself, met with the Director of OGE to discuss this matter recently and were advised that it is the preliminary view of OGE that the site selection of a high-level waste repository became a particular matter involving parties at the time that Congress enacted legislation designating Yucca Mountain as the single site to be characterized. Recognizing the implications of this position because of the length of the selection and licensing process, OGE suggested that the Yucca Mountain proceeding not be considered a single particular matter, but be rationally divided into several particular matters. That way involvement in one aspect of the proceeding as a federal employee would not preclude an individual from leaving the government and representing private parties back before the federal government with respect to aspects

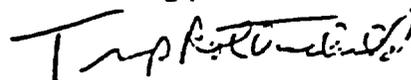
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of the proceeding that the individual had not worked on while serving as a federal employee. We are now in the process of trying to break the proceeding into many particular matters. We will develop a proposal and then discuss it with the Department of Energy. Thereafter, the proposal will be submitted to OGE for approval. This process will take months. During the interim 18 U.S.C. 207(c), discussed above, will bar [] from representing private parties before the NRC. Until the scope of the 18 U.S.C. 207(a) bar is resolved, the safest course would be for [] not to represent private parties before DOE with the intent to influence action on matters relating Yucca Mountain. A riskier course would be to undertake representation before DOE on aspects of the proceeding that [] did not personally and substantially participate in as an NRC employee. Before doing this, [] should discuss the matter with ethics counselors at the Department of Energy to make sure that they have no objection to his representation of a private party. Again, this has been discussed in depth with [] with particular emphasis on his need to get appropriate guidance from DOE.

I hope that this letter is of assistance. If you have any further questions, please do not hesitate to contact me.

Sincerely,



Trip Rothschild

Enclosure: As stated

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