



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

August 2, 2005

Ralph E. Rodgers
Designated Agency Ethics Official
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, TN 37902

Dear Mr. Rodgers:

The Office of Government Ethics (OGE) has completed its review of the Tennessee Valley Authority's (TVA) ethics program. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objective was to determine the ethics program's compliance with applicable statutes and regulations. We also evaluated the systems and procedures for ensuring that ethics violations do not occur. The review was conducted in May 2005. The following is a summary of our findings and conclusions.

HIGHLIGHTS

TVA's ethics program appears sound. We note that Human Resource Managers (HRM) are integrally involved in TVA's ethics program; you, as the Designated Agency Ethics Official (DAEO), have expressed a high level of confidence in their ability to carry out their ethics-related duties. We also note that as a result of our review, ethics officials took immediate action in order to bring the ethics program into full compliance with the relevant regulations, namely by establishing an annual ethics training plan and revising the initial ethics orientation materials.

PROGRAM STRUCTURE

TVA's staffing of the ethics program is appropriate given the agency's size and organizational structure. The ethics program is located within the Office of the General Counsel at headquarters in Knoxville, Tennessee. You, as TVA's Assistant General Counsel, serve as the DAEO for the approximately 12,800 employees serving at headquarters and at several field centers throughout the Tennessee Valley. At headquarters, you are assisted by the Alternate DAEO, who is a Senior Attorney in the Office of the General Counsel, two attorneys who serve as Deputy Ethics Officials (DEO), and several assistants. In addition, HRMs within each of TVA's various functional organizations act as DEOs whose responsibilities include coordinating designation of confidential financial disclosure filers and annual ethics trainees, reviewing and certifying confidential financial disclosure reports, approving outside employment requests, and analyzing travel payments accepted under 31 U.S.C. § 1353.

EDUCATION AND TRAINING

TVA's education and training program meets OGE's requirements and exceeds the requirements in some areas. While ethics officials did not have an annual training plan in place for 2004 or 2005, as a result of our review, they were made aware of the requirement and a plan was documented for 2005. Ethics officials assured us that they would continue this practice in the future, in accordance with 5 C.F.R. § 2638.706.

Initial Ethics Orientation Program

All new employees receive initial ethics orientation during new employee in-processing sessions. We found, however, that not all required information and materials were being distributed. New employees were only receiving a copy of the Synopsis of Standards of Ethical Conduct-Office of Government Ethics. During the course of our review, it was determined that the materials provided during initial ethics orientation needed to be revised. Based on our discussions, ethics officials will, in the future, provide employees with ethics officials' contact information and directions to a Web site link to TVA's supplemental standards of conduct regulation (5 C.F.R. part 7901).

All Presidentially-appointed, Senate-confirmed (PAS) employees appointed during the current and preceding three calendar years received initial ethics orientation from you.

Annual Ethics Training Program

All covered employees were trained in 2004. Annual ethics training is computer-based and prepared by a qualified instructor. Besides public and confidential filers, additional groups of non-covered employees whose duties require contact with the public or with TVA contractors often are required by their supervisors to complete annual ethics training. In addition, all current PAS employees received annual ethics training in each of the preceding three calendar years.

Annual ethics training is tracked through the Automated Training Information System. Employees who complete computer-based annual training are required to certify electronically that training has been completed. The certifications become permanent records in the employees' Human Resource Management System files.

PUBLIC FINANCIAL DISCLOSURE

We examined the four public financial disclosure reports required to be filed by TVA's PAS employees, as well as the report you were required to file in 2004; all of the reports were annual reports. We found that one PAS report was filed three days after the May 15 deadline and the rest were filed in a timely manner. One of the reports was not reviewed timely (the report was reviewed more than 90 days after it was filed) and one of the reports was not certified in a timely manner. In 2004, OGE asked agencies to send annual PAS reports to OGE as soon as they were certified, but no later than September 15, 2004, which you did. However, we remind

you that this year, all annual public financial disclosure reports filed by PAS employees and DAEOs should be submitted to OGE as soon as they are approved by your agency, but no later than August 1, 2005.¹

Public reports filed by non-PAS employees were generally filed and reviewed timely and contained only a few technical errors. They were thoroughly examined, as evidenced by the reviewing officials' notations. This is based on our examination of a sample of 20 of the 159 public reports required to be filed in 2004 by non-PAS employees. The sample consisted of 2 new entrant reports and 18 annual reports. We also examined an additional 3 new entrant reports of the 155 reports required to be filed in 2003 by non-PAS employees.

We found that 8 of the 23 reports we examined had a protracted certification. While there is no explicit requirement for public reports to be certified within 60 days, reviewing officials should certify the reports as soon as their examination determines there is no violation of applicable statutes and regulations.

ETHICS AGREEMENTS

There have been no written ethics agreements executed at TVA since 2001.

CONFIDENTIAL FINANCIAL DISCLOSURE

Confidential financial disclosure reports were generally filed, reviewed and certified in a timely manner. It was evident from the reviewers' notations that ethics officials followed up with employees to ensure full disclosure of assets. During the course of our review, we alerted you to several technical errors which you remedied. No substantive issues were detected. Our findings are based on an examination of a sample of 33 of the 502 confidential reports required to be filed in 2004. Of those, one was a new entrant report and 32 were annual reports.

ENFORCEMENT

Ethics officials share a close and effective working relationship with the Office of Inspector General (OIG), in accordance with 5 C.F.R. § 2638.203(b)(11) and (12). Ethics officials consult on information and findings developed by the OIG and utilize the services of the OIG as necessary. Such cooperation, as was evident through our discussions with ethics and OIG officials, is essential for the proper disposition of ethics violations.

TVA thoroughly investigates potential ethics violations and takes action against those who commit violations, as required by 5 C.F.R. § 2638.203(b)(9). During the course of our review, we examined the available documentation from the three reported violations of the Standards of Ethical Conduct for Employees of the Executive Branch that occurred between January 1, 2004 and May 10, 2005. Two of the cases involved TVA employees accepting

¹DAEOgram DO-05-009, April 13, 2005.

entertainment expenses from a contractor in excess of what ethics regulations permit. In the first case, the matter was referred to Human Resources for its consideration regarding appropriate action (the final disposition of the case was not known). In the second case, the TVA employees were required to reimburse the contractor. In addition, you provided ethics training at the next TVA (b)(6) Meeting. The third case involved misuse of a Government credit card; the employee was suspended.

TVA is aware of the requirement to concurrently notify OGE of referrals to the Department of Justice (DOJ) of alleged violations of the criminal conflict of interest laws, as required by 5 C.F.R. § 2638.603(b). Two such referrals to DOJ have been made since January 2004. In one case, an OIG official told us that concurrent notification was provided to OGE via the OGE form 202; however, we had no record of it. Ethics officials subsequently forwarded the notification to our Office. The other case was presumed to have been declined because only a small amount of money was involved. We were told that, in such cases, the OIG sends a letter to the U.S. Attorney outlining the case and noting that TVA considers the matter declined in favor of TVA's administrative remedies, unless it is advised to the contrary. You were uncertain if it was necessary to provide concurrent notification to our Office in these cases. OGE does require concurrent notification of all referrals to DOJ of potential violations of the criminal conflict of interest laws, including those where declination is presumed. Therefore, in the future, please provide our Office with concurrent notification of all referrals.

Finally, it has been TVA's practice for ethics and OIG officials to meet on a quarterly basis to discuss all ongoing ethics-related matters. Though OGE strongly endorses such cooperation, we are concerned that ethics officials may not become aware of the OIG's referrals to DOJ in a timely manner. This would preclude concurrent notification to OGE. We encourage you to coordinate with the OIG to ensure you are immediately notified of referrals so that you can provide concurrent notification to our Office.

ADVICE AND COUNSELING

Ethics advice and counseling services meet the requirements of 5 C.F.R. § 2638.203(b)(7) and (8). We examined a sample of ethics-related advice and counseling provided by ethics officials to PAS and non-PAS employees. The advice was primarily dispensed via e-mail. We concluded that all of the written advice, which covered a variety of subjects, was consistent with applicable ethics statutes and regulations. It was provided in a timely manner and was comprehensive in addressing the relevant issues.

In addition, TVA employs some best practices in promoting and measuring the success of its advice and counseling program. Advertisements placed in the TVA newsletter periodically remind employees of the ethics rules as well as alert employees to the availability of the ethics office and the OIG to answer ethics-related questions. In addition, a survey conducted after annual ethics training has shown that covered employees are likely to report suspected fraud by another TVA employee.

THE REGIONAL RESOURCE
STEWARDSHIP COUNCIL

Ethics officials have determined that all members of TVA's sole advisory committee, the Regional Resource Stewardship Council (RRSC), are representatives, not special Government employees. The determination was made after review of relevant OGE guidance and consideration of the status designation of members on an earlier, now-expired, TVA advisory committee, the Land Between the Lakes Advisory Committee, on which the RRSC was modeled. All of RRSC's members are representatives of a specific industry or sector interest with a stake in TVA's management of the region's natural resources. Therefore, after discussions with ethics officials and reviewing the RRSC charter and other relevant documentation, OGE is satisfied that RRSC's members have been properly designated as representatives.

AGENCY SPECIFIC ETHICS PROHIBITIONS,
RESTRICTIONS, AND REQUIREMENTS

Section 2(f) of the Tennessee Valley Authority Act of 1933 (TVA Act) prohibits TVA's Board of Directors (Board) from holding specific financial interests that conflict with the duties of their positions.² With the passage of Public Law 108-447 in December 2004, the Board will undergo a restructuring and the conflicts of interest section in the TVA Act will expire. The new Board, to expand from three to nine, part-time PAS members, has been given the authority to "adopt and submit to Congress a conflict-of-interest policy applicable to members of the Board and employees of the Corporation." You have been in consultation with OGE regarding the restructuring of the Board and are aware of the implications not only for providing ethics-related services to the additional PAS nominees but also for the development of a conflict-of-interest policy. We encourage you to maintain liaison with OGE to ensure the implementation of an effective conflict-of-interest policy.

TVA's supplemental standards of conduct regulation, located at 5 C.F.R. part 7901, requires prior written approval for outside employment. However, specified classes of employees may be exempted from the requirement under § 7901.102. We examined a sample of the approvals granted in 2005 and it appeared that all were granted in accordance with part 7901 and established agency procedures.

²Section 2(f) states that "[n]o director shall have financial interest in any public-utility corporation engaged in the business of distributing and selling power to the public nor in any corporation engaged in the manufacture, selling, or distribution of fixed nitrogen or fertilizer, or any ingredients thereof, nor shall any member have any interest in any business that may be adversely affected by the success of the Corporation as a producer of concentrated fertilizers or as a producer of electric power."

Mr. Ralph E. Rodgers
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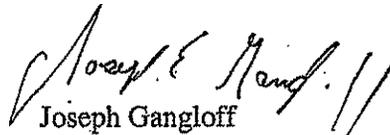
**TRAVEL PAYMENTS FROM
NON-FEDERAL SOURCES**

TVA accepts payments for travel, subsistence, and related expenses from non-Federal sources under 31 U.S.C. § 1353. TVA has tasked HRMs within the agency's components with accepting travel payments on behalf of TVA and conducting a conflict of interest analysis as part of the approval process. Final approval of the payment must come from an HRM, a TVA Officer, or an ethics official. You are responsible for collecting the reports from the HRM and forwarding the semiannual reports to OGE.

We examined the payments reported on TVA's two semiannual reports to OGE covering the period October 1, 2003 through September 30, 2004. All payments appeared to be in compliance with 31 U.S.C. § 1353 and no substantive issues were found.

In closing, we wish to thank you and your staff for your efforts on behalf of the ethics program. A copy of this report is also being sent to TVA's Inspector General. Please contact Kari Heebink at 202-482-9319, if we may be of further assistance.

Sincerely,



Joseph Gangloff
Deputy Director
Office of Agency Programs

Report Number 05- 015