

July 5, 2005

Executive Commission on Ethical Standards
28 West State Street
Room 1407
PO Box 082
Trenton, New Jersey 08625

Via email, facsimile, and US mail

Re: Request for review and determination regarding potential ethics code violations

Dear Commission:

For the reasons stated below, based on knowledge and belief summarized below, pursuant to New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq., NJ PEER requests that the Commission investigate, find facts, determine compliance, and take enforcement action, as warranted, of potential ethics violations by NJDEP Commissioner Bradley M. Campbell.

New Jersey PEER is a state chapter of a national alliance of state and federal agency resource professionals working to ensure environmental ethics and government accountability.

According to an email dated 10/28/02 from Joe Riggs of K. Hovnanian, Inc. to NJDEP Commissioner Bradley M. Campbell,

“I have reviewed the list of streams/rivers that you provided me to assess the impact on future development should these streams be upgraded to trout production or c1 waters” (see attachment 1 for complete email)

This statement by Riggs, as well as the content of his email, documents that, sometime prior to 10/28/02, Commissioner Campbell provided Mr. Riggs a list of specific streams pending upgrade. It is a matter of public record that Mr. Riggs' firm, K Hovnanian, Inc., had a large economic stake in the information, because various Hovnanian development projects could be impacted by DEP stream upgrades. At the time, Commissioner Campbell was aware of the economic interests of K Hovnanian in this matter.

Streams are upgraded by NJDEP as regulatory amendments to the NJ Surface Water Quality Standards, and are adopted in accordance with rulemaking procedures. Upgrades are designed to protect water quality, which is held in trust by NJDEP on behalf of the people of the State.

DEP staff transmitted recommendations for specific stream upgrade rule amendments to Commissioner Bradley Campbell via a “Rulemaking Launch” memorandum dated

10/11/02. (see attachment 2). Several of these streams were ultimately upgraded by DEP, but one of those opposed by Mr. Riggs (the Peckman River) was not.

The streams identified in Riggs' 10/28/02 email are very similar to the streams identified for upgrade in DEP staff's 10/11/02 memorandum to Commissioner Campbell.

The DEP was engaged in rulemaking procedures at the time of Riggs' email, specifically regarding the contents of Riggs' email. As a result of the ongoing rulemaking procedures, DEP staff's recommended lists of streams pending upgrade are "pre-decisional" "deliberational" documents. These documents are not public records, they are not "generally available to members of the public", and they are statutorily exempt from OPRA. Accordingly, the provision of a list of streams pending upgrade by Commissioner Campbell to Mr. Riggs appears to violate various ethics code restriction regarding: a) avoidance of conduct which might reasonable be expected to create an impression or suspicion that he may be in violation of the public trust; b) avoidance of conduct which is in violation of the public trust; and c) an express prohibition on disclosure or use of confidential information. (see attachment 3 for text).

The selective release of this list of streams to a developer with a known economic stake in the outcome prior to rule proposal, undermined the integrity of the rulemaking process and created an appearance of, or actual, ethics violation.

We request that the Commission address this matter during the next meeting.

Sincerely,

Bill Wolfe, Director
NJ PEER

Attachments

Attachment 1 – http://www.peer.org/docs/nj/05_5_7_riggsemail.pdf &
http://www.peer.org/docs/nj/05_5_7_campbellreply.pdf



KHov.pdf

Attachment 2 - http://www.peer.org/docs/nj/05_5_7_peckhamchrono.pdf

Attachment 3 - Applicable provisions of NJDEP Ethics Code

- II. FINDINGS

(a) In our representative form of government, it is essential that the conduct of public

officials and employees shall hold the respect and confidence of the people. Public officials must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

- VI. GENERAL STANDARDS

(a) No Department employee shall:...

7. Knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his or her acts that he or she may be engaged in conduct violative of his or her trust as a Department employee.

- XIV. DISCLOSURE OR USE OF CONFIDENTIAL INFORMATION

(a) No Department employee shall willfully disclose to any person, whether or not for pecuniary gain, any information not generally available to members of the public which he or she receives or acquires in the course of and by reason of his or her official duties.