



New York State Code of Conduct

EDP Renewables North America LLC
Training Seminar, Legal Department

May 12, 2015

Background

EDPR NA entered into the Code of Conduct Agreement (the “Code”) on August 19, 2009

- The Code was proposed by the OAG’s office as settlement of certain investigations into allegations that certain wind companies had alleged improper relationships with elected local government officials
- The Code was negotiated by wind industry representatives with the New York State Office of the Attorney General
- The Code sought to ensure that wind farm development is conducted in a transparent manner and that municipal officials and wind companies are accountable
- All of the largest wind developers in New York signed the Code



Overview

Goals of Code of Conduct Agreement

- Establishes standards regarding conflicts of interest governing conduct of the wind development companies with respect to the local government officials, agents, and their Relatives
- Requires public disclosure of financial interests of the local government officials in the wind farm development (such as leases, easements and other land agreements). Note that the Code requires Wind Farm Developers to disclose any financial interest held by a Municipal Officer or his/her Relative for the 6 year period prior to the Code execution. See EDPR NA's website for disclosures at www.edprwindfarms.com
- Requires wind companies to implement Code training for its officers and employees
- Establishes a standing Task Force with enforcement powers to monitor compliance with the Code—penalties for violation of the Code can reach up to \$100,000 per violation



EDPR NA's Procedures to Be Adhered To

- EDPR NA requires updated disclosures twice each year. These disclosures must be made of relationships in each municipality in which EDPR NA is developing, constructing, and/or operating. These updates will be in January and July of each year and will consist of disclosure letters to the municipalities updating the existing relationships with Municipal Officers. EDPR NA requires Code compliance with each and every agreement entered into with a Municipal Officer.
- Annual lists of current Municipal Officers and Relatives in each municipality in which EDPR NA is developing, constructing and operating are to be posted in each EDPR NA New York office, on the EDPR NA intranet and in construction trailers. *For projects and prospects under Development or Construction, the Development Team is responsible for updating these lists and providing them to Susan Culver, who will be responsible for getting them uploaded to the intranet. Operations is responsible for providing these lists to Susan Culver for all operating projects.*
- The Code must remain posted on a company website and posted in offices involved in New York projects.
- All New York real estate legal document forms must include language to be consistent with the Code and be *accompanied* by a completed Landowner's questionnaire.
- Company-wide internal Code compliance procedure must be posted on EDPR NA's intranet.
- Code training to be done annually to update existing employees and train new employees.
- Any changes to the public disclosure chart is to be uploaded promptly to EDPR NA's website. Changes should be provided to Susan Culver, who will be responsible for updating the public disclosure chart on the a company website.



Agenda

Review of the Code

- Prohibited Conflicts of Interest
- Public Disclosure Requirements
- Education & Training
- Enforcement & Compliance Provisions
- Questions About the Code: Here's What You Need to Do
- EDPR NA's Procedures



Prohibited Conflicts of Interest

What you should not do

1. General Standard

- “The Wind Company shall not knowingly, directly or indirectly offer to, or confer on, a Municipal Officer, his or her Relative , or any third party on behalf of such Municipal Officer, any benefit under circumstances in which it could reasonably be inferred that the benefit would influence such Municipal Officer to commit an official act or refrain from performing an official duty in connection with the Wind Company’s Wind Farm Development, unless such Municipal Officer recuses him- or herself from any official duties in connection with the Wind Company’s Wind Farm Development.”

Comments:

- (i) very broad standard [may include contractors that EDPR NA hires]**
- (ii) extends to Relatives**
- (iii) conflict is cured by recusal**



Prohibited Conflicts of Interest

What you should not do

Important definitions

“Municipality” means a county, city, town, village, public authority, school district or any other special or improvement district, but shall have no application to a city having a population of one million or more, or to a county, school district or other public agency or facility therein.

“Municipal Officer” means any officer or employee of a municipality, whether paid or unpaid and includes, without limitation, members of any officer, board, body, advisory board, counsel, commission, agency, department, district, administration, division, bureau or committee of the municipality. “Municipal Officer” also includes any entity that is directly or indirectly controlled by, or is under common control with, such officer or employee. “Municipal Officer” does not include: (a) a judge, justice, officer or employee of the unified court system; (b) a volunteer firefighter or civil defense volunteer, except a fire chief or assistant fire chief; or (c) a member of an advisory board of the municipality if, but only if, the advisory board has no authority to implement its recommendations or to act on behalf of the municipality or to restrict authority of the municipality to act.

Note:

- The definition of a Municipal Officer shall apply to any current officials as well as anyone that has been a Municipal Officer within the last two years. Example: The Town Supervisor leaves office on December 31, 2011. He is considered to be a Municipal Officer until December 31, 2013.

“Relative” means a spouse or domestic partner, child, step child, sibling or parent of a Municipal Officer or a person claimed as a dependent on the Municipal Officer’s latest individual state income tax return.

Prohibited Conflicts of Interest

What you should not do

2. **No Gifts.** “No gifts totaling more than \$10 in the aggregate over 1 year period.”

Examples: drinks, meals, drinks, t-shirts, bus tours to the projects, landowner dinners-Municipal Officers and Relatives will need to pay directly to the vendor for the cost of such dinners if attending.

EDPR NA policy: Zero tolerance: no gifts of any kind

3. **No Compensation for Services.** The Wind Company cannot knowingly employ, hire, retain or compensate any Municipal Officer or a Relative of any Municipal Officer whose duties involve Wind Farm Development decisions within two years of such duties, unless such Officer first recuses themselves by written agreement. After recusal, compensation and recusal must be disclosed to the Task Force , the OAG and the Town Clerk.

Examples: Hiring the Municipal Officer or Relative for consulting services or for removing trash from the project.

EDPR NA policy: Zero tolerance: no compensation for services of any kind.

4. **No Contingent Compensation.** No compensation to Municipal Officer or their Relative contingent upon such Officer’s action before Municipal agency.

Examples: Hiring a Municipal Officer or a Relative if the Municipal Officer votes in favor of the Project or paying for a trip for the Municipal Officer, family and/or Relative if the Municipal Officer votes in favor of the project.

EDPR NA policy: Zero tolerance: no contingent compensation of any kind.



Prohibited Conflicts of Interest

What you should not do

- 5. No Honorarium.** No honorarium during Municipal Officer's service or within two years of termination of such service.

Examples: Payment of a fee for professional services such as consulting services on which there is no fixed fee; payment of a speaking fee.

EDPR NA policy: Zero tolerance: no honorarium of any kind.

- 6. Restrictions on All Agreements.** No agreement that requires Municipal Officer or a Relative of a Municipal Officer to support or cooperate with the Wind Company's development in the course of official duties (i.e., no cooperation clause in NY leases/easements/land agreements). **A Municipal Officer must also agree to recuse themselves in any agreement from any official duties in connection with the Wind Company's Wind Farm Development.**



Prohibited Conflicts of Interest

What you should not do

7. **Restrictions on Confidential Information.** No solicitation, use or receiving Confidential Information acquired by a Municipal Officer in the course of official duties.

“Confidential Information” means (i) information revealing governmental decision related to the Wind Farm Development before it is announced to the public; (ii) trade secrets submitted to the Municipality; (iii) information compiled for law enforcement purposes; and (iv) other information deemed confidential by law.

8. **Restrictions on Legal Representation.** No legal fees can be paid for any Municipal Officer or Municipality in connection with any investigation by any law enforcement agency.

Note: there may be exceptions to this under NY SEQRA or other state laws—check with Jeffrey Nemeth for Arkwright, Alabama Ledge, Franklin, Rolling Upland and Aron Branam for Jericho Rise, North Slope first, and if they are not available, check with Jana Green or Roselene Alexis if the issue arises.



Public Disclosures

What you must do

Disclosure of New Conflicts

Required Disclosures. EDPR NA must disclose the name of the Municipal Officer or Relative and the nature of financial interest with respect to (i) contracts such as a service contract or any property identified for the Wind Farm Development in which the Municipal Officer or a Relative of a Municipal Officer has a financial interest. In all such cases (whether for a Relative or Municipal Official), EDPR NA shall take all of the following steps in compliance with the *EDPR NA/NYS Attorney General's Code of Conduct Disclosure/Publication Procedures*, which can be found on the intranet:

1. Submit in writing for public inspection to the Clerk of Municipality, with a copy to the organization (Board) the Municipal Officer sits on.
2. Notify Municipal Official of the disclosure and **obtain agreement of the Municipal Officer to recuse themselves.** Preferably, the agreement to recuse should be in the agreement itself or if not possible by separate written agreement.
3. Publish such disclosure in the local newspaper of record in the county.
4. Post the disclosure on our website.
5. Update NY Code of Conduct matrix and post to our website.
6. Submit in writing to the Task Force and Judith C. Malkin, Assistant AG.

These disclosures will be made by EDPR NA (i) before EDPR NA submits an initial application to install any meteorological tower, or installs such tower, or presents to Municipality the prospect of the wind farm and (ii) any time an agreement is reached with a Municipal Officer with respect to (a) contracts such as service contract and (b) any property identified for the Wind Farm Development or in the vicinity of the Wind Farm Development wherein the Municipal Officer has agreed to recuse his/her self in the agreement itself or by separate agreement regardless if EDPR NA has submitted an initial application to install any meteorological tower, or installs such tower, or presents to Municipality the prospect of the wind farm.



Public Disclosures

What you must do

Disclosure of New Conflicts

Recording of Memorandum of Leases/Options. For all leases and options with the Municipal Officers or Relatives, EDPR NA must file the Memorandum in the Office of the County Clerk for the county where such property is located **and** post the disclosure on the www.edprwindfarms.com website. The memorandum must include:

1. The names and addresses of the parties;
2. Description of property;
3. Essential terms of the agreement and the range of the actual monetary consideration or good faith estimate thereof if not fixed, including description contingencies that could affect such consideration;

Note: The Code provides eight (8) possible ranges.



Public Disclosures

What you must do

Recording of Easements/Land Agreements. For Easements and other land agreements with the Municipal Officers or Relatives, EDPR NA must file the Easement (not a memorandum) and other land agreements (or a memorandum of such land agreement) which are to be recorded in the Office of the County Clerk for the county where such property is located **and** post the disclosure on the www.edprwindfarms.com website. The Easement/Land Agreement must include:

1. The names and addresses of the parties;
2. Description of property;
3. Essential terms of the agreement and the range of the actual monetary consideration or good faith estimate thereof if not fixed, including a description contingencies that could affect such consideration.

Note: The Code provides eight (8) possible ranges.



Education & Training

Hotline Number. EDPR NA has made available on its website and offices in New York and Houston the OAG Public Integrity Hotline number (1-800-428-9072) for reporting any violation of the Code. Any violation should also be reported to EDPR NA's General Counsel (713-265-0350).

Training Requirement. Acknowledgment of the Code training is required for all of officers of EDPR NA and employees who work on NY projects, i.e., *sign the acknowledgment form contained at the end of this training presentation or you may be developing offshore projects in Alaska.*

Enforcement & Compliance

Task Force. The compliance with the Code will be overseen by the Task Force that includes District Attorneys, representatives of NY Towns and Counties' associations, the OAG's office and one representative from the non-profit representing the wind industry.

- Task Force reports only to the OAG.
- Wind Companies pay proportionally for the Task Force's administrative costs.
- Wind Companies must disclose any conduct in violation of the Code to the OAG.
- Task Force investigates the complaints about the Code violation, and may refer the complaint to the OAG.
- If the OAG finds that the Wind Company violated the Code based on preponderance of evidence, the Wind Company may be subject to penalties of up to \$50,000 for the first violation and up to \$100,000 for the subsequent violations. The Wind Company can challenge the penalty in court as not supported by preponderance of evidence.



Questions About the Code: Here's What You Need to Do

HAVE A QUESTION REGARDING THE CODE?

Jeffrey Nemeth for Arkwright, Alabama Ledge, Franklin, Rolling Upland and Aron Branam for Jericho Rise, North Slope

All questions should be directed to either Jeffrey or Aron depending on the project. Jeffrey and Aron will gather all of the necessary information and interface with legal.

JANA GREEN

Jeffrey and Aron will act as the interface with legal and bring the information to Jana Green or Roselene Alexis.

LESLIE FREIMAN

Jana Green and Roselene Alexis will consult with Leslie Freiman, if necessary, and make a determination.

ROSELENE ALEXIS & JANA GREEN

Roselene Alexis and Jana Green will provide the determination to the party requesting it and see that it is properly implemented.



EDPR NA Code Procedures

Identifying and resolving the conflicts of interest under the Code

- 1. Inform Municipalities.** Before (i) EDPR NA submits an initial application to install any meteorological tower, or installs such tower, or presents to Municipality the prospect of the wind farm or (ii) any time an agreement is reached with a Municipal Officer with respect to (a) contracts such as service contract and (b) any property identified for the Wind Farm Development or in the vicinity of the Wind Farm Development wherein the Municipal Officer has agreed to recuse his/her self in the agreement itself or by separate agreement regardless if EDPR NA has submitted an initial application to install any meteorological tower, or installs such tower, or presents to Municipality the prospect of the wind farm; EDPR NA must provide copies of the Code and notice of its intention to comply with it to the New York Municipality.
- 2. Identify.** Prior to entering into any type of agreement in New York, EDPR NA must obtain a completed Attorney General Questionnaire from the party with whom we are entering the agreement. Note: This includes landowners as well as contractors that are hired directly by EDPR NA. Examples of contractors would include but not be limited to office repairs, lawn care, telephones, etc.
- 3. Refer.** If the party with whom we wish to enter into an agreement identifies a potential conflict of interest, refer the issue to the legal department.
- 4. Decide.** If Legal confirms that the conflict of interest would exist if the agreement was finalized, EDPR NA needs to notify the Municipal Officer and ask that they recuse themselves. The agreement by the Municipal Officer to recuse themselves shall be included in the agreement between the Municipal Officer and EDPR NA. In the event that EDPR NA desires to enter into an agreement with the Relative of a Municipal Officer (as defined in the Code), a separate agreement must be obtained from the Municipal Officer wherein he or she agrees to recuse himself or herself.
- 5. Compliance.** All disclosures must be done in compliance with the *EDPR NA/NYS Attorney General's Code of Conduct Disclosure/Publication Procedures*, which can be found on the intranet.
- 6. Disclose.** If EDPR NA determines that the Agreement with the conflicted party is required for the project, then:
 - Legal will prepare the necessary disclosures as required by the Code, including informing the Task Force.
 - Recommend to such Municipal Officer that he or she consult with Municipality's attorney regarding legal obligations and potential recusal.
- 7. Ask.** If in doubt that there may be a conflict of interest under the Code with respect to any issue in development, construction, or operation of projects in New York, please call or email Jeffrey Nemeth for Arkwright, Alabama Ledge, Franklin, Rolling Upland and Aron Branam for Jericho Rise, North Slope first, and if they are not available, check with Jana Green, Roselene Alexis or General Counsel of EDPR NA.



Additional Information

1. **Contractors and Subcontractors.** EDPR NA employees should not influence under any circumstance a contractor or subcontractor in the hiring of its respective workers including but not limited to the respective worker being a Municipal Officer or the Relative of a Municipal Officer. However, EDPR NA will provide a list of Municipal Officers to the contractor and request that the contractor advise EDPR NA if any worker including those of a subcontractor is a Municipal Officer or Relative. If such a worker is identified, EDPR NA will ask that the conflicted Municipal Officer recuse himself or herself and will send a notice to the Town Clerk and to the Task Force identifying such conflict and make the required disclosures. If in doubt that there may be a conflict of interest under the Code with respect to this issue in the construction or operation of projects in New York, please call or email Jeffrey Nemeth for Arkwright, Alabama Ledge, Franklin, Rolling Upland and Aron Branam for Jericho Rise, North Slope first, and if they are not available, check with Jana Green or General Counsel of EDPR NA.
2. **Posting of List of current Municipal Officer in each project area.** EDPR NA will post a list of current Municipal Officer in each project area in each of the project area's respective offices, on EDPR NA intranet and in any construction trailer.
3. **Becoming a Municipal Officer after Signing Agreement.** In the event that you become aware of an existing landowner becoming a Municipal Officer or a Relative of a Municipal Officer after entering into an agreement with EDPR NA, you must immediately notify Jeffrey Nemeth for Arkwright, Alabama Ledge, Franklin, Rolling Upland and Aron Branam for Jericho Rise, North Slope first, and if they are not available, Jana Green, Roselene Alexis or General Counsel of EDPR NA so that appropriate action can be taken. For this reason, it is very important to monitor the political changes in your project areas.



Question & Answer

**REMEMBER TO SIGN THE ACKNOWLEDGMENT ON THE LAST PAGE OF PRESENTATION
AND RETURN IT TO JANA GREEN OR ROSELENE ALEXIS**

THANK YOU!



Code of Conduct Agreement Training Acknowledgment

I, _____, attended the New York Code of Conduct Agreement training seminar required by Section III.3 of the Code, and have read and agree to comply with the Code of Conduct Agreement.

Signature: _____

Title: _____

Date: _____