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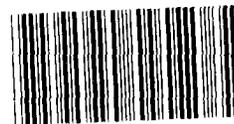
Report To The Chairman, Subcommittee On
Oversight And Investigations
Committee On Energy And Commerce
House Of Representatives

Procedures Need Strengthening In The
U.S. Synthetic Fuels Corporation's
Conflict Of Interest Program

GAO reviewed the appropriateness of the U.S. Synthetic Fuels Corporation's criteria for identifying confidential information and, by using one case study, the consistency by which these criteria have been applied. Also, GAO reviewed the Corporation's program to assist its directors, officers, and employees in avoiding conflicts of interest.

GAO found that the Corporation's criteria for identifying confidential information are consistent with the purposes of the Freedom of Information Act in protecting certain information from public release and that the Corporation, for the most part, consistently applied its criteria for identifying confidential information on the First Colony project.

GAO did, however, identify weaknesses in the Corporation's conflict of interest program, including key employees and contractors not filing reports of their financial interests, insufficient monitoring of officers' and employees' financial interests, and conflict of interest determinations being inconsistently made or inadequately documented in the Corporation files. GAO makes recommendations to correct these weaknesses.



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WASHINGTON, D.C. 20548

RESOURCES, COMMUNITY,
AND ECONOMIC DEVELOPMENT
DIVISION

B-201035

The Honorable John D. Dingell
Chairman, Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

This is in response to your July 18, 1983, letter, addressed to the U.S. Synthetic Fuels Corporation, which also requested certain work from us. Specifically, you asked that we review:

- the appropriateness of the Corporation's criteria for identifying confidential information and, using the First Colony peat-to-methanol project as a basis, the consistency by which these criteria have been applied; also whether information on the First Colony project initially withheld from the Subcommittee and subsequently provided to a public interest group had been properly classified as confidential and
- the existing legislative criteria governing the Corporation's conflict of interest program, the Corporation's procedures for preventing conflicts of interest, and how those procedures are followed.

In reviewing the Corporation's practices used to designate information as confidential,¹ we used the First Colony project, as you asked and, with one exception, did not evaluate Corporation information on any other synthetic fuel projects before the Corporation. We examined the Corporation's guidelines on public access to material in the possession and under the control of the Corporation; analyzed Corporation material on the First Colony project that had been provided both to you and others; compared the criteria contained in the Freedom of Information Act for identifying confidential information against those used by the Corporation; and interviewed Corporation officials responsible for replying to public requests for Corporation material.

¹Throughout the remainder of the report, the term "confidential" refers to trade secrets, or commercial or financial information, exempt from disclosure under subsection(b)(4) of the Freedom of Information Act.

In reviewing the Corporation's conflict of interest efforts, we evaluated the program that the Corporation established to assist its directors, officers, and employees in avoiding conflicts of interest. Specifically, we examined the Corporation's policy on standards of conduct; reviewed the files of all Corporation directors, officers, employees, and independent contractors who have submitted reports of their financial interests; and on the basis of that review, discussed with the Corporation's ethics officer several of the conflict of interest determinations he has made. Appendix I contains a detailed discussion of our objectives, scope, and methodology and the detailed results of our work.

In summary, we believe that the Corporation's criteria for identifying confidential information are consistent with the purpose of the Freedom of Information Act to protect certain information from mandatory public release. Also, we believe the Corporation, for the most part, consistently applied its criteria for identifying confidential information on the First Colony project.

Regarding information provided your Subcommittee in February 1983, we found that in 17 places the Corporation initially withheld information from the Subcommittee because it misclassified general information as confidential. For example, in places where an entire sentence had been deleted from the material provided, only one word or one phrase in that sentence actually contained confidential information subject to deletion. Similarly, where an entire paragraph had been deleted, only one sentence of that paragraph contained confidential information subject to deletion. Overall, we found that the amount of misclassified information deleted was small compared to the total volume of material provided. This misclassified information was provided to a public interest group and subsequently to the Subcommittee. In addition, the Subcommittee was provided the full text of the material with the confidential information highlighted in yellow.

Regarding your second area of interest, we identified four weaknesses in the Corporation's conflict of interest program which could allow potential conflicts of interest to exist. They include (1) some Corporation employees with key responsibilities not submitting reports on their financial interests, (2) some Corporation contractors not providing complete information needed to determine their financial interests in, and affiliations with, companies conducting business with the Corporation prior to contract agreement time, (3) insufficient Corporation monitoring of officers' and employees' financial interests for potential conflicts of interest, and (4) some conflict of interest determinations have been inconsistently made or inadequately documented in the Corporation files. In view of these weaknesses, we are making recommendations to strengthen the Corporation's conflict of interest program.

THE CORPORATION, FOR THE MOST PART,
CONSISTENTLY APPLIED ITS CRITERIA FOR
IDENTIFYING CONFIDENTIAL INFORMATION
ON THE FIRST COLONY PROJECT

Section 121 of the Energy Security Act (42 U.S.C. 8717 (1982)) requires the Corporation to release to the public, upon request, any information regarding its organization, procedures, requirements, and activities. However, this section also authorizes the Corporation to withhold confidential business information that is exempt from disclosure under the Freedom of Information Act. Further, this section makes the Trade Secrets Act (18 U.S.C. 1905 (1982)), which prohibits the release of confidential business information by government employees to the public, applicable to the Corporation.

In its February 9, 1983, response to your request for information on the First Colony project, the Corporation deleted certain information that it considered to be confidential. According to the Corporation's Director for Public Disclosure, this information consisted of cost, production, and contract data involving the project sponsor and firms seeking to construct or operate the project. Subsequently, your office informed the Corporation, in April 1983, that its February 1983 response was unacceptable. Following two meetings between your office and Corporation officials, the Corporation on May 18, 1983, provided you a full text of the material you requested with confidential information highlighted in yellow. This highlighting was done to alert you to the need to safeguard this information and guard against its inadvertent release.

According to the Corporation's Director for Public Disclosure, the Corporation used six criteria (see app. I) contained in the Corporation's guidelines on disclosure and confidentiality in determining whether the information initially and subsequently provided to you was confidential. In our view, these six criteria are appropriate for identifying confidential information which is exempt from disclosure under the Freedom of Information Act.

Apart from your request on the First Colony project, the Corporation also responded on March 31, 1983, to a public interest group which, on March 16, 1983, requested the same package of information that you initially received. Based on our comparison of the initial response provided to you and that provided to the public interest group, we identified 17 places where the public interest group received some additional information. According to the Director for Public Disclosure, the additional information represented information that the Corporation had initially classified as being confidential, but once it realized that it was not, the Corporation removed restrictions on its release and provided it to the public interest group.

In summary, we believe the Corporation, for the most part, consistently applied its criteria for identifying confidential information on the First Colony project. We found that the Corporation did misclassify some general information as confidential in its initial response to you. However, the Corporation remedied that by providing you a second response, dated May 18, 1983, with confidential information highlighted in yellow.

THE CORPORATION'S CONFLICT OF INTEREST PROGRAM SHOULD BE STRENGTHENED

According to Corporation policy, its directors, officers, and employees will avoid any action, whether or not specifically prohibited, which might result in, or create the appearance of, giving improper preferential treatment to any person, or which might adversely affect the confidence of the public in the integrity of the Corporation. In addition to this general policy, the Corporation has included, in its conflict of interest program, restrictions on its directors', officers', and employees' financial interests and prohibitions on their actions on behalf of the Corporation. Also, the program requires the directors, officers, selected employees, and Corporation contractors to report their financial interests and the Corporation's ethics officer to review these interests against the Corporation's list of companies conducting business with the Corporation (list of participating organizations).

During our review, we identified four weaknesses in the Corporation's conflict of interest program which could allow potential conflicts of interests to exist.

Some employees with key Corporation responsibilities are not required to file reports of their financial interests

The first weakness involves some key Corporation employees not being required to file reports of their financial interests. The Corporation's ethics officer told us he currently relies on the departmental vice-presidents to determine which employees should file these reports. We found, however, that the vice-presidents have overlooked as many as 27 employees who have important Corporation responsibilities.

For instance, five employees who have not been required to file reports of their financial interests are involved in developing the Corporation's comprehensive strategy for meeting the synthetic fuel production goals established by the Congress. Although these individuals are not involved in evaluating any specific projects at the Corporation, they are involved in identifying energy sources for meeting the Corporation's energy production goals. If one of these individuals has or acquires a

financial interest in a particular energy source, that individual could be involved in a conflict of interest situation.

Because certain employees who have key roles at the Corporation have not been required to file reports of financial interests, we believe the Corporation may need to expand its criteria on who should be reporting. These criteria currently are applicable to those employees involved in the investigation, evaluation, negotiation, administration, or implementation of any synthetic fuel project before the Corporation. As worded, we believe these criteria can be interpreted as excluding certain Corporation employees with key responsibilities (see app. I, p. 10) if these employees are determined not to be directly reviewing a synthetic fuel project proposal. By expanding its criteria to specifically include employees with key responsibilities, we believe the Corporation can further its stated goal which is to properly perform the Corporation's business and maintain the public's confidence in the Corporation.

Some independent contractors are not providing complete information needed to determine their financial interests and affiliations prior to contract agreement time

A second weakness concerns some Corporation independent contractors not listing their financial interests and affiliations. The Corporation does not require independent contractors to file a report of financial interest as it does for some of its employees. However, independent contractors are required to complete a Corporation document listing any financial interest in, and any affiliation with, any person, firm, or organization which is included on the Corporation's list of participating organizations. This must be done before signing a contractual agreement with the Corporation.

We looked at the Corporation files on 25 of approximately 80 independent contractors who were required to provide financial interest information to the Corporation. We found 17 either did not submit the required document or, if submitted, left blank the portion where the listing was required.² According to the instructions for completing the document, if the independent contractors had no such interests or affiliations, they were to write "none" on the document.

²During our review, we did not make an independent determination of the financial interests and affiliations of these contractors.

Although we found that the other eight contractors had initially listed their financial interests and affiliations, we noted that they had not updated their lists as changes occurred to the list of participating organizations--reissued approximately every other month. According to the Corporation's chief contracting officer, there had been no Corporation requirement to provide contractors with updated lists of participating organizations nor ask them to further disclose their financial interests and affiliations as new companies appeared on these lists. However, after our inquiries on the subject, the Corporation instituted such a requirement in December 1983 and has been implementing it since that time.

Independent contractors are likely to have worked for, are working for, or contemplate working for employers besides the Corporation. For that reason, we believe that, for all independent contractors under service to the Corporation, the Corporation should be aware of their financial interests in, and affiliations with, companies on the Corporation's list of participating organizations. By ensuring that its financial interest requirements regarding independent contractors are met, we believe the Corporation can avoid possible conflict of interest situations in the future.

Insufficient monitoring of
employees' financial interests
for potential conflicts of interest

A third weakness in the Corporation's conflict of interest program relates to monitoring of officers' and employees' financial interests. Officers and employees have the primary responsibility for identifying a potential conflict of interest situation. They are routinely provided an updated Corporation list of participating organizations and asked, on the basis of that list, to bring any potential conflict of interest matter to the ethics officer's attention. However, to safeguard against conflicts of interest, the Corporation's ethics officer told us that once a year he checks each officer's and employee's reports of financial interests against the companies on the Corporation's list of participating organizations.³ If a match occurs, the ethics officer notifies the officer or employee that he or she should either disqualify himself or herself from any work involving that company or request a conflict of interest waiver. The ethics officer believes that officers and employees have done a good job of reporting potential conflicts of interest and that this annual review has been sufficient.

³The ethics officer presently reviews the financial interests of the Corporation directors prior to each Board of Directors meeting.

We found, however, examples where officers and employees had financial interests in companies that have been added to the Corporation's list of participating organizations since the ethics officer completed his last annual review. Specifically, we identified four officers who each had reported a financial interest in a different company on the Corporation's list of participating organizations for more than 3 months but had not notified the ethics officer. We believe this interval of time was sufficient for these officers to have disqualified themselves from the projects sponsored by these companies or sought conflict of interest waivers. Because none did and because of their position in the Corporation, we believe the appearance of a conflict of interest could arise.

In addition, we identified two employees each of whom had been assigned to a group of Corporation employees directly responsible for evaluating a project. These two employees, however, reported having a financial interest in the project sponsor. After we brought this to the Corporation ethics officer's attention, we were told that one of the two employees had already disposed of the financial interest. He said that the other employee still had the financial interest in question but had not yet started work on the project, and had been reassigned to other duties within the Corporation as a result of our inquiry.

The Corporation updates the list of companies involved in synthetic fuel projects before the Corporation about every other month and provides that list to all officers and professional employees so that they can identify and bring any possible conflict of interest to the ethics officer's attention. This effort, however, has not prevented Corporation officers and employees from being placed in conflict of interest situations. On the basis of our work, the Corporation has recognized that a problem exists in this area and has been including a notice to all officers and professional employees, in subsequent lists of participating organizations, pointing out the prohibition against their participating on projects in which they have a financial interest. While this is a good step, we believe the ethics officer needs to review forms more frequently in order to assure that conflicts do not arise.

In discussing this issue with the ethics officer, he continues to believe that his annual monitoring is successful in identifying and preventing potential conflict of interest situations at the Corporation. However, in view of our finding that Corporation officers and employees were not complying with the prohibition, we continue to believe the Corporation may want to have the ethics officer review officers' and employees' financial interests against the Corporation's list of participating organizations on more than an annual basis. The ethics officer is responsible for adding new companies to the list of participating organizations and for maintaining custody of officers' and employees' reports of financial interests. Given the number of

employees who presently are required to report their financial interests (less than 100), and of that number, who own stock shares in any outside company or corporation (less than 50), we do not believe it would be a difficult or time-consuming task for the ethics officer to review the officers' and employees' reports against those new companies (usually about 20 to 30) that are added to each updated list.⁴

Some conflict of interest determinations have been inconsistently made or inadequately documented

A fourth weakness pertains to the Corporation's handling of individual conflict of interest cases. According to the Corporation's conflict of interest policy, directors, officers, and employees will avoid any action, whether or not specifically prohibited, which might result in, or create the appearance of, giving improper preferential treatment to any person, or which might adversely affect the confidence of the public in the integrity of the Corporation. In addition, the Corporation's conflict of interest program requires the directors, officers, selected employees, and Corporation contractors to report their financial interests and the Corporation's ethics officer to review these interests against the Corporation's list of participating organizations. If an individual has a financial interest in a company on the list of participating organizations, the ethics officer is required to determine in writing whether or not the interest is significant enough to affect the individual's services for the Corporation. If the ethics officer determines that the financial interest is too remote or too inconsequential, a conflict of interest waiver is granted.

The ethics officer is responsible for making conflict of interest determinations for Corporation officers and employees. While the ethics officer has been involved in advising directors on conflict of interest matters, the responsibility for making conflict of interest determinations for Corporation directors rests with the board of directors.

During our review, however, we found 17 instances out of approximately 80 total conflict of interest cases where there were inconsistent determinations being made (3) or there was a lack of documentation of the determinations made (14). In these 17 instances, the ethics officer either ruled there was no conflict of interest (9) or granted a conflict of interest waiver (8).

⁴This should take only a few hours. It would require the ethics officer to review less than 50 reports of financial interests, if he limits himself only to those officers and employees who had reported owning stock shares, against the 20 to 30 new companies doing business with the Corporation.

Concerning inconsistent determinations, in June 1983, the Corporation's ethics officer stated, in a memorandum to a director, that the director's close personal friendship with the president of a company sponsoring a project before the Corporation did not represent a conflict of interest because he did not have any financial interest in the company. On the other hand, in a November 1983 memorandum, the Corporation's ethics officer stated that another director's close personal friendship with the president of a company sponsoring a project before the Corporation did represent a conflict of interest because it created the appearance of giving improper preferential treatment to this friend and/or it might adversely affect the confidence of the public in the integrity of the Corporation. For us, in reviewing the memoranda, it was difficult to draw a distinction between the two situations because in neither case did the director have a financial interest in the respective company. Therefore, we believe the positions taken by the ethics officer should have been the same.

A lack of documentation of the conflict of interest determinations made was also a concern. For example, according to his 1982 financial statement, a Corporation director was a former partner and managing director in a company which became involved in sponsoring several projects before the Corporation. Despite this, there exists no documentation regarding the possible conflict of interest aspects of the situation. According to the ethics officer, he believed that the director had not been associated with his former company for 5 years and, as likely as not, the company was not involved with synthetic fuel projects then. Thus, the ethics officer told us he did not pursue the situation with the director but instead concluded there was no conflict of interest and no reason to document the situation. We believe, however, that some uncertainty exists in whether the director had been associated with his former company since leaving their employ, and for that reason, the ethics officer should have investigated the situation and documented his investigation in writing.

The number of instances we found of inconsistent conflict of interest determinations or a lack of documentation of the determinations made represents about one-fifth of the total number of conflict of interest determination cases of the Corporation. Given the trust confided in the Corporation by the Energy Security Act for the private sector development of commercial synthetic fuel projects, the ratio of these instances to the total seem too important to overlook. Therefore, we believe that the Corporation should improve its conflict of interest efforts by ensuring that conflict of interest decisions are adequately supported and documented and consistent with Corporation policies and procedures. By doing this, we believe the Corporation can provide a clearer signal to its officers and employees regarding the conduct expected of them and help prevent conflicts of interests or such appearances in the future.

RECOMMENDATIONS

To enhance the public confidence in the integrity of the U.S. Synthetic Fuels Corporation, we recommend that the Corporation chairman:

- Expand the Corporation's criteria on which employees should be submitting reports of their financial interests by specifying, in the criteria, that it is also applicable to those employees with key responsibilities (not necessarily project-specific).
- Enforce the Corporation's requirement that all independent contractors under service to the Corporation either report their financial interests in, and affiliations with, companies on the Corporation's list of participating organizations, or report that they have none.
- Direct the ethics officer to increase the frequency of his monitoring of officers' and employees' financial interests to better identify and resolve conflict of interest situations.
- Require the ethics officer to ensure that conflict of interest decisions are consistent and the reasons for the decisions are documented in the Corporation's files.

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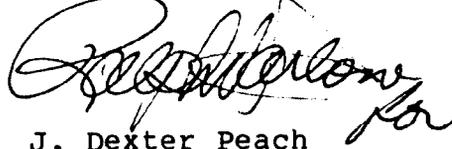
We did not obtain written agency comments. However, we discussed the contents of the report with Corporation officials to ensure the report's accuracy. We also discussed the contents of the report with an official of the Office of Personnel Management's Office of Government Ethics to ensure that the report deals with conflict of interest activities at the Corporation in a fair and consistent manner. Except for not obtaining written agency comments, we made our review in accordance with generally accepted government auditing standards.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of its issuance. At that time, we will send copies to the Corporation; the Director, Office of Management and Budget; the Senate Committee on Energy and Natural Resources; the Senate Committee on Governmental Affairs; the House Committee on Government Operations; and others upon request. We

B-201035

will ask the Corporation to advise the committees and us within 60 days of any action it has taken or plans to take on our recommendations.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "J. Dexter Peach".

J. Dexter Peach
Director

C o n t e n t s

	<u>Page</u>
APPENDIX	
I	
DETAILED DISCUSSION OF CONFIDENTIALITY OF DOCUMENTS AND CONFLICTS OF INTEREST	1
Overview	1
Objectives, scope, and methodology	2
Application of the Corporation criteria for identifying confidential information on the First Colony project	4
The Corporation's conflict of interest program	7

ABBREVIATIONS

GAO General Accounting Office

DETAILED DISCUSSION OF CONFIDENTIALITY
OF DOCUMENTS AND CONFLICTS OF INTEREST

OVERVIEW

Questions on the consistency used by the Corporation in its handling of confidential documents and the adequacy of the Corporation's conflict of interest efforts evolved from the Corporation's evaluation of the First Colony peat-to-methanol project. In late 1982, a newspaper article stated that the chairman of the Corporation signed a letter of intent to financially assist this project over the objections of the Corporation staff.¹ Subsequently, the Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, asked the Corporation, by letter dated January 10, 1983, to provide the Subcommittee with all memoranda, reports, and other documents the Corporation staff prepared concerning the First Colony project.

After receiving two Corporation responses--dated February 9, 1983, and May 18, 1983--the Subcommittee chairman questioned whether he had received all relevant material in response to his request. Therefore, by letter dated July 18, 1983, he indicated to the Corporation that he would ask us, along with his Subcommittee staff, to review the Corporation files on the First Colony peat-to-methanol project. He also questioned the amount and type of information that had been classified as confidential in the material he received, including the project cost and the percentage of the project cost that related to harvesting of the peat. Because he believed that determinations of confidentiality were being overused, he also indicated to the Corporation that he would ask us to review the Corporation's practices on determining confidentiality in light of the First Colony peat-to-methanol project to determine whether such extensive use of confidentiality is warranted or required.

At the same time, the Subcommittee chairman noticed, in the material provided to the Subcommittee, that one of the Corporation's directors had a financial interest in a company which had indicated an interest in becoming one of the sponsors of the First Colony project.² The Board of Directors was aware of the amount of the financial interest this director maintained in the company

¹In February 1984, the sponsors of this project withdrew their request for financial assistance and, in March 1984, the Corporation withdrew its letter of intent to financially support the project.

²This company was not then, nor is it now, a sponsor of the project.

and determined it to be too inconsequential to affect the integrity of this director's service for the Corporation. Therefore, the Board permitted the director to participate in voting on the project. In view of this determination, the Subcommittee chairman also indicated to the Corporation that he would ask us to examine more closely the adequacy of the Corporation's conflict of interest efforts, including determinations regarding each of the Board members.

OBJECTIVES, SCOPE, AND METHODOLOGY

Based on discussions subsequent to the Subcommittee's letter of July 18, 1983, to the Corporation, the Subcommittee chairman's office agreed there would be no joint review of the Corporation files on the First Colony project. Instead, as one objective, the Subcommittee chairman's office asked that we determine the appropriateness of the Corporation's criteria used for identifying confidential information and, using the First Colony project as a basis, whether these criteria had been consistently applied. The Subcommittee chairman's office also asked that we determine whether information on the First Colony project initially withheld from the Subcommittee and subsequently provided to a public interest group had been properly classified as confidential. As a second objective, the Subcommittee chairman's office also asked us to review the existing legislative criteria governing Corporation conflicts of interest, the Corporation's procedures for preventing conflicts of interest, and how the procedures are followed. We performed our review of these matters between October 1983 and February 1984.

In addressing the two objectives, we reviewed the legislative history of the Energy Security Act (Public Law 96-294) which created the Corporation. The act contained specific provisions applicable to the Subcommittee's request, namely section 121 (42 U.S.C. 8717 (1982)), which addresses public access to information, and section 118 (42 U.S.C. 8714 (1982)), which addresses conflicts of interest and financial disclosure. We also reviewed the Freedom of Information Act (5 U.S.C. 552 (1982)); the Ethics in Government Act of 1978 (Public Law 95-521); federal regulations on employee responsibilities and conduct, and executive personnel financial disclosure requirements; and Executive Order 11222 which prescribes standards of ethical conduct for government officers and employees.

In reviewing the Corporation's practices on handling confidential information, we directed our attention to the First Colony project and, with one exception, did not evaluate Corporation information on any other synthetic fuel project before the Corporation. In one instance, we did review Corporation material provided to another congressional oversight committee--the Subcommittee on Environment, Energy, and Natural Resources, House Committee on Government Operations--on another project. We examined the

Corporation's guidelines on public access to material in the possession and under the control of the Corporation; analyzed Corporation material on the First Colony peat-to-methanol project that had been provided both to the Subcommittee and others; compared court-developed and legislative history criteria for identifying confidential business information under the Freedom of Information Act against that used by the Corporation; and interviewed Corporation officials responsible for replying to public requests for project material in the possession of the Corporation. We did not evaluate, however, whether the Corporation had properly identified confidential information on the First Colony project, except for selected places where the Corporation indicated that it had initially misclassified some general information as confidential.

Regarding the Corporation's conflict of interest efforts, to review the Corporation's procedures for preventing conflicts of interest, we analyzed the Corporation's policy on standards of conduct and discussed the policy with the Office of Personnel Management's Office of Government Ethics, which is responsible for approving portions of that policy. We also compared the Corporation's policy against those policies used by various federal agencies including the Department of Defense, Department of the Interior, and Environmental Protection Agency. Next, to determine how the Corporation's conflict of interest procedures are followed, we analyzed determinations by the Corporation's ethics officer in cases of potential conflict of interest. Also to independently determine if any individuals were involved in a potential conflict of interest situation, we reviewed the files of all Corporation directors, officers, and employees who have been required or have been asked to file reports of financial interests. We consulted with the Office of Government Ethics³ and discussed with the Corporation's ethics officer several conflict of interest determinations made and potential conflicts of interest identified by us.

In addition, we examined the pay classifications and job functions of all remaining Corporation employees, and reviewed the contract files for those independent contractors who have received \$15,000 or more⁴ in payments from the Corporation during any given fiscal year since the Corporation's inception in 1981 to determine if any others should have been required to report their financial interests under the Corporation's conflict of interest

³The Office of Government Ethics is responsible for providing overall direction and leadership concerning executive branch policies related to preventing conflicts of interest.

⁴We arbitrarily selected this amount which represents an amount near the salary of a GS-16 official employed for 90 days. According to the Corporation's policy on standards of conduct, a consultant receiving this salary is required to submit a report of financial disclosure.

program. Finally, we reviewed various GAO reports which have addressed the issue of conflicts of interest and financial disclosure at such federal agencies as the National Science Foundation, U.S. Geological Survey, Department of Defense, Department of the Interior, and Federal Reserve Board.

During our review, a Long Island, New York, newspaper published a series of articles alleging specific conflicts of interest by two of the Corporation's directors. The Corporation's ethics officer told us that he had completed his review of this matter and had provided the results to the Subcommittee. We did not perform an independent review of this matter.

We did not obtain written agency comments. However, we discussed the contents of the report with Corporation officials to ensure the report's accuracy. We also discussed the contents of the report with an official of the Office of Government Ethics to ensure that the report deals with conflict of interest activities at the Corporation in a fair and consistent manner. Except for not obtaining written agency comments, we made our review in accordance with generally accepted government auditing standards.

APPLICATION OF THE CORPORATION
CRITERIA FOR IDENTIFYING CONFIDENTIAL
INFORMATION ON THE FIRST COLONY PROJECT

Section 121 of the Energy Security Act requires the Corporation to make available to the public, upon request, any information regarding its organization, procedures, requirements, and activities. However, this section also authorizes the Corporation to withhold confidential business information which is exempt from disclosure under the Freedom of Information Act. Further, this section makes the Trade Secrets Act (18 U.S.C. 1905 (1982)), which prohibits the release of confidential business information by government employees to the public, applicable to the Corporation.

We found that the Corporation's criteria for identifying confidential information are consistent with the purpose of the Freedom of Information Act to protect certain information from mandatory public release. In addition, using the First Colony peat-to-methanol project as a basis, we found that the Corporation, for the most part, consistently applied its criteria for identifying confidential information on the First Colony project.

In its February 1983 response to the Subcommittee, the Corporation withheld some material from the Subcommittee because it misclassified general information as confidential. We found that the amount of information deleted in these places was small compared to the total volume of material provided. This misclassified information was provided to a public interest group and subsequently to the Subcommittee.

The Corporation's criteria for identifying confidential information are consistent with the Freedom of Information Act

In practice, the Corporation withholds from the public information which, in its view, falls into two of the nine categories of material exempt from disclosure under the Freedom of Information Act. The two categories are business confidential information and predecisional analyses. (See 5 U.S.C. 552(b)(4) and (5)(1982)).⁵ At the time a project sponsor submits confidential information to the Corporation, the Corporation does not generally require the sponsor to justify the confidentiality markings. However, when a request has been received from an outside party for copies of the confidential information, the Corporation gives the sponsor an opportunity to support the information's confidentiality. Subsequent to that, the Corporation makes its own confidentiality determination.⁶

According to the Corporation's Director for Public Disclosure, the Corporation uses six criteria contained in the Corporation's October 1981 guidelines on disclosure and confidentiality in determining whether information in its possession is confidential. The criteria consider whether

- the information has been held in confidence by the person to whom it pertains;
- the information is of a type customarily held in confidence by the person to whom it pertains, and there is a reasonable basis for the person holding the information in confidence;
- the information was transmitted to and received by the Corporation in confidence;
- the information is available in public sources;

⁵The Corporation defines predecisional analyses as including advisory opinions, recommendations, and deliberations comprising part of a process by which Corporation decisions are formulated and the release of which would likely interfere with the Corporation's deliberative process and stifle honest and frank discussions within the Corporation.

⁶Should the Corporation decide to provide information to an outside party that the sponsor considers confidential, the sponsor may appeal this decision to the Corporation's Office of General Counsel which must rule on the appeal within 25 business days. The Corporation's guidelines on disclosure and confidentiality provide for no further appeal within the Corporation.

- disclosure of the information is likely to impair the Corporation's ability to obtain similar information in the future; and
- disclosure of the information is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.

We found that the purpose of exempting confidential business information from public disclosure under the Freedom of Information Act is to protect the privacy and the competitive position of those who provide certain information to assist government policymakers. The exemption encourages cooperation with the government by protecting those who disclose confidential information to government agencies from competitive disadvantages that would result from its publication. The legislative history of the Freedom of Information Act further describes the purpose of the exemption as being to protect the confidentiality of information obtained through government inquiry, which would customarily not be released to the public by the person from whom it was obtained. Thus, in our view, the six Corporation criteria are appropriate for identifying confidential information which is exempt from disclosure under the Freedom of Information Act.

The Corporation, for the most part, consistently applied its criteria for identifying confidential information on the First Colony project

Based on the January 10, 1983, request by the Subcommittee chairman for information on the First Colony peat-to-methanol project, the Corporation provided the Subcommittee, by letter dated February 9, 1983, a package of material with information deleted that it had determined to be confidential. According to the Corporation's Director for Public Disclosure, information deleted by the Corporation related to cost, production, and contract data involving the project sponsor and firms seeking to construct or operate the project.

Subsequently, the Subcommittee chairman indicated to the Corporation, in April 1983, that the February 1983 response, with its deletions, was unacceptable. Following two meetings between the Subcommittee staff and Corporation officials, the Corporation provided the Subcommittee by letter dated May 18, 1983, a full text of the material with confidential information highlighted in yellow. This highlighting was done to alert the Subcommittee to the need to safeguard this information and guard against its inadvertent release.

Since the May 18, 1983, response, the Corporation's Director for Public Disclosure told us that the Corporation has elected to treat all subsequent requests from any of its congressional oversight subcommittees in a similar manner. As of February 1984,

only one other congressional oversight subcommittee--the Subcommittee on Environment, Energy, and Natural Resources, House Committee on Government Operations--had requested project information from the Corporation, but that request did not involve the First Colony peat-to-methanol project. We reviewed the material provided to that other committee and no material appeared to be deleted.

We also noted that a Washington-based public interest group requested, by letter dated March 16, 1983, duplicate copies of the First Colony material provided to the Subcommittee. According to the Corporation's Director for Public Disclosure, the Corporation removed predecisional Corporation analyses in the form of advisory opinions, recommendations, and deliberations from copies of the material, and because of Corporation practice, it re-reviewed copies of the remaining material for confidential information. In this re-review, the Director for Public Disclosure told us the Corporation determined that some of the information deleted from the material provided to the Subcommittee in the February 1983 response was not confidential information. For example, in places where an entire sentence had been deleted, only one word or one phrase in that sentence contained confidential information subject to deletion. Similarly, where an entire paragraph had been deleted, only one sentence of that paragraph contained confidential information subject to deletion. Based on our comparison of the initial material provided to the Subcommittee with that provided to the public interest group on March 31, 1983, we identified 17 places where the public interest group received some additional information not initially provided to the Subcommittee.

We believe, however, using the Corporation's criteria for identifying confidential information, that the additional material provided to the public interest group was of a general nature and did not contain confidential information. For example, a nonspecific discussion on peat harvesting costs would probably be considered general information, but the actual cost was considered confidential and consequently was withheld from the public interest group.

In summary, the Corporation withheld confidential information (and some general information misclassified as confidential) in its February 9, 1983, response to the Subcommittee on the First Colony project. Subsequently, the Corporation remedied that by providing the Subcommittee, on May 18, 1983, a full text of the material with confidential information highlighted in yellow.

THE CORPORATION'S CONFLICT OF INTEREST PROGRAM

According to Corporation policy, its directors, officers, and employees will avoid any action, whether or not specifically prohibited, which might result in, or create the appearance of giving improper preferential treatment to any person, or which might adversely affect the confidence of the public in the integrity of

the Corporation. In addition to this general policy, the Corporation has included in its conflict of interest program, restrictions on its board of directors', officers', and employees' financial interests and prohibitions on their actions on behalf of the Corporation. Also, the program requires the directors, officers, selected employees, and Corporation contractors to report their financial interests to the Corporation's ethics officer who reviews these interests against a list of companies (list of participating organizations) conducting business with the Corporation. This list contains the name of every company that is undertaking, or formally proposes to undertake, a synthetic fuels project involving the Corporation and any other entity participating in any material way in any such project. This list includes, but is not limited to, financial institutions, investment bankers, construction companies, engineering firms, supply contractors, and law firms.

If an individual has a financial interest in a company on the list of participating organizations, the ethics officer is required to determine whether or not the interest is significant enough to affect the individual's services for the Corporation.⁷ If the ethics officer determines that the financial interest is too remote or too inconsequential, a conflict of interest waiver is granted. If the ethics officer determines otherwise, then divestiture of the financial interest, reassignment within the Corporation, or other remedies are sought.

The ethics officer is responsible for making conflict of interest determinations for Corporation officers and employees. While the ethics officer has been involved in advising directors on conflict of interest matters, the responsibility for making conflict of interest determinations for Corporation directors rests with the board of directors.

During our review, we identified four weaknesses in the Corporation's conflict of interest program which could allow potential conflicts of interest to exist.

- Some employees with key Corporation responsibilities are not required to file a report of their financial interests.
- Some independent contractors are not providing complete information needed to determine their financial interests and affiliations prior to contract agreement time.
- The Corporation is not sufficiently monitoring officers' and employees' financial interests for potential conflicts of interest.
- Some conflict of interest determinations have been inconsistently made or inadequately documented.

⁷The individual has the responsibility to bring any potential conflict of interest situation to the ethics officer's attention.

Some employees with key Corporation responsibilities are not required to file reports of their financial interests

Although the Energy Security Act generally exempts the Corporation from statutes governing federal departments, section 118 of the act does require the Corporation to follow the financial disclosure provisions of the Ethics in Government Act of 1978. These provisions require the reporting of financial interests by certain Corporation officials. The Corporation has also required some of its employees, not covered by these provisions, to report their financial interests. We found, however, that the application of the Corporation process used to identify these employees has overlooked as many as 27 employees who have key responsibilities at the Corporation.

Section 118 of the Energy Security Act requires the directors, officers, and Corporation employees who are compensated at a rate equivalent to that payable for a grade GS-16 or above (\$58,900 annually) to complete annual financial disclosure forms. The form requires the employee to disclose any other employment relationships and any non-Corporation income, assets, liabilities, and gifts. Because copies of these forms are available to the public upon request, they provide the public a basis to measure the integrity of the Corporation.⁸

The Corporation, in its policy on standards of conduct, expanded the provisions of the Energy Security Act by requiring that certain additional employees complete a report of financial interest. According to this policy, such a report shall be submitted annually by each Corporation employee whose position is equivalent to a grade GS-13 or above (\$36,100 annually) and who occupies a position, the basic duties and responsibilities of which consist of the investigation, evaluation, negotiation, administration, or implementation of any synthetic fuels project formally proposed to the Corporation or the procurement of goods and services for the Corporation. The policy specifies that it is also applicable to such other employees who are in positions which otherwise meet the above criteria, except for rate of compensation, and whose inclusion has been determined by the Chairman in writing as essential to protect the integrity of the Corporation and avoid employee involvement in a possible conflict of interest situation. According to the Corporation's ethics officer, the vice-presidents of the Corporation have been permitted to interpret this expanded policy and determine who, in their respective departments, should be submitting these reports of financial interest.

In applying these criteria, we found, however, that the vice-presidents' determinations for these employees (GS-13 up to GS-16)

⁸The Ethics in Government Act of 1978 (Public Law 95-521) directs the Office of Government Ethics to systematically review the contents of these forms.

have overlooked many who have key responsibilities at the Corporation. For instance, within the same department, we identified two senior analysts with comparable job functions and salaries, but only one was submitting a report of financial interest. Also, we found that two file clerks (GS-7) responsible for maintaining project files were submitting reports of financial interest, but the director for industry relations responsible for being the principal Corporation liaison to industry was not. Because of these and other similar situations, we submitted to the Corporation a list of 27 employees and asked why these employees were not submitting reports of financial interest.

After checking with the respective vice-presidents within the Corporation, the Corporation ethics officer indicated that four of these employees would be asked to report their financial interests in the future. However, according to the ethics officer, the other 23 employees, including the senior analyst and the director for industry relations mentioned above, would not be asked to do so because the respective vice-presidents did not believe these 23 employees strictly met the Corporation's standards of conduct policy for designating which employees should report their financial interests.

While we do not believe that all employees at the Corporation should be asked to report their financial interests, reporting by some additional employees appears essential to protect the integrity of the Corporation. For instance, 5 of the 23 employees mentioned above who have not been required to file reports of their financial interests are involved in developing the Corporation's comprehensive strategy for meeting the synthetic fuel production goals established by the Congress. Though these individuals are not involved in evaluating any specific projects at the Corporation, they are involved in identifying energy sources for meeting the Corporation's energy production goals. If one of these individuals has or acquires a financial interest in a particular energy source, that individual could be involved in a conflict of interest situation.

In addition, we found that these other key Corporation employees--also a part of the 23 employees mentioned above--were not reporting their financial interests:

- Manager for Employment,
- Director for Public Disclosure,
- Director for Media Relations,
- Director for House of Representatives Relations, and
- Director for Senate Relations.

We believe these employees probably should be reporting their financial interests. Because of their work responsibilities in

providing information to parties outside the Corporation and possible financial interests, these employees could be involved in potential conflict of interest situations and, if true, those conflicts could adversely affect the integrity of the Corporation.

Conclusion and recommendation

Because certain employees who have key roles at the Corporation have not been required to file reports of financial interests, we believe the Corporation may need to expand its criteria on who should be reporting. These criteria currently are applicable to those employees involved in the investigation, evaluation, negotiation, administration, or implementation of any synthetic fuel project before the Corporation. As worded, we believe these criteria can be interpreted as excluding certain Corporation employees with key responsibilities (see p. 10) if these employees are determined not to be directly reviewing a synthetic fuel project proposal. By expanding its criteria to specifically include employees with key responsibilities, we believe the Corporation can further its stated goal which is to properly perform the Corporation's business and maintain the public's confidence in the Corporation.

Therefore, we recommend that the Chairman, U.S. Synthetic Fuels Corporation, expand the Corporation's criteria on which employees should be submitting reports of their financial interests by specifying, in the criteria, that it is also applicable to those employees with key responsibilities (not necessarily project-specific).

Some independent contractors are not providing complete information needed to determine their financial interests and affiliations prior to contract agreement time

Independent contractors fulfill essential mission responsibilities at the Corporation. They have been used to assist in developing and negotiating financial assistance agreements and developing the Corporation's comprehensive strategy for achieving the synthetic fuel production goals established by the Congress. The Corporation has attempted to avoid even the appearance of a conflict of interest for its independent contractors by establishing a requirement that these contractors disclose any relationships they might have with companies conducting business with the Corporation. We found, however, that this requirement was not always being enforced, and therefore, the Corporation was not in a position to determine whether a conflict of interest situation existed for these independent contractors.

In practice, the Corporation does not require independent contractors to file reports of financial interest as it does for

some of its own employees. However, according to the Corporation's ethics officer, the Corporation does require these independent contractors to complete a document listing their financial interests in, and affiliations with, companies on the Corporation's list of participating organizations prior to signing a contractual agreement. If a contractor has an interest in, or affiliation with, one of these organizations, he or she may not be employed by the Corporation unless the Corporation's ethics officer grants a waiver.

We reviewed the files of those independent contractors who have received \$15,000 or more (see page 3 of appendix I) in payments from the Corporation during any fiscal year since the Corporation's inception in 1981. We identified 25 out of approximately 80 independent contractors that met these criteria, and these contractors have signed a total of 43 agreements with the Corporation.

Of the 25 contractors identified, 17 did not comply with the Corporation's conflict of interest requirement.⁹ The contractors either did not submit to the Corporation the document which lists their financial interests and affiliations or, if they did submit the document, that portion requiring a listing of financial interests was left blank. If the independent contractors had no such interests or affiliations, then the contractors were to write "none" on the document.

Of the eight contractors who properly complied with the requirement, two stated they had a financial interest in organizations on the Corporation's list of participating organizations. We found, however, that neither contractor was granted a waiver of that interest by the ethics officer, as required by the Corporation. According to the ethics officer, he was unaware that a potential conflict of interest existed for these contractors because he was not notified by the Corporation's contracting officer of the financial interest of the contractors.¹⁰ These two contractors no longer have contracts with the Corporation.

Although we noted that eight contractors had initially submitted the proper document listing their financial interests and affiliations, we found that they had not updated their lists as

⁹During our review, we did not make an independent determination of the financial interests and affiliations of these contractors.

¹⁰When brought to the attention of the Corporation's contracting officer, he told us that, in the future, if a contractor had a financial interest in a company on the Corporation's list of participating organizations, he would forward the matter to the ethics officer.

changes occurred to the list of participating organizations.¹¹ According to the Corporation's chief contracting officer, the reason for this is that there has been no requirement to provide contractors with updated lists of participating organizations and ask them to further disclose their financial interests and affiliations as new companies appeared on these lists. However, after our inquiries on this subject, the Corporation instituted such a requirement in December 1983 and has been implementing it since that time.

Conclusion and recommendation

Independent contractors are likely to have worked for, are working for, or contemplate working for other employers besides the Corporation. For that reason, we believe that, for all independent contractors under service to the Corporation, the Corporation should be aware of their financial interests in, and affiliations with, companies on the Corporation's list of participating organizations. By ensuring that its financial interest requirements regarding independent contractors are met, we believe the Corporation can avoid possible conflict of interest situations in the future.

Therefore, we recommend that the Chairman, U.S. Synthetic Fuels Corporation, enforce the Corporation's requirement that all independent contractors under service to the Corporation either report their financial interests in, and affiliations with, companies on the Corporation's list of participating organizations, or report that they have none.

Insufficient monitoring of officers' and employees' financial interests for potential conflicts of interest

According to the Corporation's ethics officer, the identification of a potential conflict of interest situation is largely the responsibility of the individual. The Corporation updates its list of participating organizations about every other month and provides that list to all professional employees so that they can identify and bring any possible conflict of interest to the ethics officer's attention. However, the Corporation's ethics officer, as a part of his duties, also performs a check for potential conflicts of interest. We found, however, that this check has not been completely successful in identifying and preventing potential conflict of interest situations at the Corporation.

Upon being hired at the Corporation, every officer and employee must read and agree to abide by the Corporation's standards of conduct policy and the statutes and regulations contained

¹¹The Corporation ethics officer issues an updated list of participating organizations approximately every other month.

therein. One part of this policy is a statement that an officer or an employee shall not participate personally and substantially in a particular matter in which the officer or the employee knowingly has a financial interest or in which the officer or the employee participated personally and substantially prior to employment by the Corporation. With the chairman's approval, however, the ethics officer may waive this prohibition if the ethics officer determines in writing that the interest is too remote or too inconsequential, or the prior participation was too insubstantial to affect the integrity of the services which the Corporation may expect of the individual. The Corporation's standard of conduct policy places the responsibility on the individual to make the ethics officer aware of a potential conflict of interest in order that a determination can be made.

As a further step to safeguard against conflicts of interest, the ethics officer told us that once a year he checks each officer's and employee's reports of financial interests against the Corporation's list of participating organizations.¹² If a match occurs, the ethics officer notifies the officer or employee that he or she is in a potential conflict of interest situation and that the officer or employee should disqualify himself or herself from any work on a project involving that company or request a conflict of interest waiver. The ethics officer believes this annual review is a sufficient check against any potential conflicts of interest because no problems have developed with a Corporation director, officer, or employee being involved in a conflict of interest situation.

During our review, however, we found examples where some Corporation officers and employees had financial interests in companies that had been recently added to the list of participating organizations since the ethics officer completed his last annual review. While the ethics officer acknowledged this situation, he did not believe these were conflict of interest situations because, to his knowledge, none of these officers or employees of the Corporation have been involved in evaluating a project sponsored by a company in which they had a financial interest.

We identified four Corporation officers, however, who each had reported a financial interest in a different company on the Corporation's list of participating organizations for more than 3 months, but had not notified the ethics officer. We believe this interval of time was sufficient for these officers to have disqualified themselves from the projects sponsored by these companies or sought conflict of interest waivers. Because none did and because of their position in the Corporation, we believe the appearance of a conflict of interest could arise.

¹²The ethics officer presently reviews the financial interests of the Corporation directors prior to each Board of Directors meeting.

In reviewing the financial holdings of other Corporation employees who have submitted reports of financial interest, we identified seven individuals who owned stock in one or more of the companies on the Corporation's list of participating organizations. Of these seven individuals, five had no apparent Corporation involvement with those companies in which they reported having a financial interest. However, the two remaining individuals had been assigned to a group of Corporation employees directly responsible for evaluating a project sponsored by the company in which these individuals reported having a financial interest. In checking on these situations, the Corporation's ethics officer said that one of the two employees had already disposed of the financial interest. He said that the other employee still had the financial interest in question but had not yet started work on the project and had been reassigned to other duties within the Corporation as a result of our inquiry.

In our view, the above situation occurred for two reasons. First, the employee did not fulfill his primary responsibility to report a potential conflict of interest to the ethics officer. Second, the potential conflict of interest materialized after the ethics officer had completed his annual review. The ethics officer told us that, because of our inquiries in this area, the Corporation has been placing, in its subsequent lists of participating organizations, a notice to employees pointing out the prohibitions against their participation on projects in which they have a financial interest. On the other hand, the ethics officer said he continues to believe that his annual monitoring is successful in identifying and preventing potential conflict of interest situations at the Corporation.

Conclusion and recommendation

The Corporation updates the list of companies involved in synthetic fuel projects before the Corporation about every other month and provides that list to all professional employees so that they can identify and bring any possible conflict of interest to the ethics officer's attention. This effort, however, has not prevented Corporation officers and employees from being placed in conflict of interest situations. Based on our work, the Corporation has recognized that there is a problem in this area and has included a notice to all professional employees, in its future lists of participating organizations, pointing out the prohibition against their participation on projects in which they have a financial interest. However, in view of finding that Corporation officers and employees were not complying with the prohibition, we believe this action, by itself, may not be sufficient.

We believe the Corporation may want to have the ethics officer review officers' and employees' financial interests against the Corporation's list of participating organizations on more than an annual basis. The ethics officer is responsible for adding new companies to the list of participating organizations and for

maintaining custody of officers' and employees' reports of financial interests. Given the number of employees who presently are required to report their financial interests (less than 100) and, of that number, who own any stock shares in any outside company or corporation (less than 50), we do not believe it would be a difficult or time-consuming task for the ethics officer to review the officers' and employees' reports against those new companies (usually about 20 to 30) that are added to each updated list.¹³

Therefore, we recommend that the Chairman, U.S. Synthetic Fuels Corporation, direct the ethics officer to increase the frequency of his monitoring of officers' and employees' financial interests to better identify and resolve conflict of interest situations.

Some conflict of interest determinations
have been inconsistently made or
inadequately documented

A conflict of interest determination tends to set a precedent. Once the determination is made, it serves as a basis for defining acceptable or unacceptable employee conduct. For that reason, it is important that conflict of interest determinations be consistently applied and documented. At the Corporation, however, we found instances of inconsistent conflict of interest determinations being made or a lack of documentation of the conflict of interest determinations made.

The criteria used by the Corporation for making a conflict of interest determination derive from the Energy Security Act. The act prohibits a director from voting on any matter in which he or she has a financial interest. However, this prohibition does not apply, according to the act, if the director first advises the board of directors of the nature of the particular matter in which he or she proposes to participate and makes full disclosure of such financial interest, and the board of directors determines by majority vote that the financial interest is too remote or too inconsequential to affect the integrity of such director's services for the Corporation in that matter.¹⁴ While the act is silent on participation by Corporation officers and employees, the conference report to that act recommended that the Board establish guidelines for officers and employees with similar prohibitions on their actions.

¹³This should take only a few hours. It would require the ethics officer to review less than 50 reports of financial interest, if he limits himself only to those officers and employees who had reported owning stock shares, against the 20 to 30 new companies doing business with the Corporation.

¹⁴If the particular director wishes to, he or she may request the ethics officer to evaluate the financial interest in question and make a recommendation to the board.

Accordingly, as discussed earlier, the Corporation established a standards of conduct policy which incorporated a provision that an officer or an employee shall not participate personally and substantially in a particular matter in which the officer or the employee knowingly has a financial interest or in which he or she participated personally and substantially prior to employment by the Corporation. However, the provision also specifies that the Corporation's ethics officer may waive this restriction if he determines in writing that the interest is too remote or too inconsequential, or the prior participation was too insubstantial to affect the integrity of the services which the Corporation may expect of the individual.

According to the Corporation's ethics officer, terms such as "too remote," "too inconsequential," or "too insubstantial" are part of a standard language used in all federal conflict of interest regulations, but they have not been universally defined. For that reason, the various federal agencies tend to interpret them differently. At the Corporation, the ethics officer indicated that he considers four factors in deciding whether an individual's financial interest in a company on the Corporation's list of participating organizations is "too remote" or "too inconsequential." They include (1) the dollar value of the stock in relation to the individual's net worth, (2) the income from the stock in relation to the individual's adjusted gross income for that year, (3) the number of stock shares, in question, in relation to the total number of stock shares outstanding for a company, and (4) whether or not the synthetic fuel project in which the company is involved is important to the success of that company. In addition, the ethics officer indicated that he considers, among other factors, the degree of project involvement during an individual's prior employment in deciding if the participation on the project by the individual was "too insubstantial." Based on these factors, the ethics officer said, he determines whether a conflict of interest exists for the individual.

During our review, we spoke with officials at the Office of Government Ethics in the Office of Personnel Management who agreed that no specific definitions have been given to the terms "too remote," "too inconsequential," or "too insubstantial." In addition, the officials stated that the factors that the Corporation's ethics officer used to make conflict of interest determinations are within the bounds of accepted practice.

In reviewing the Corporation's files, however, we found 17 instances out of approximately 80 total conflict of interest cases in which inconsistent determinations were made (3) or the documentation of the determinations made was lacking (14). In these 17 instances, the ethics officer either ruled there was no conflict of interest (9) or granted a conflict of interest waiver (8). The following examples illustrate instances where we believe inconsistent conflict of interest determinations were made.

In June 1983, the Corporation's ethics officer stated, in a memorandum to a director, that the director's personal and family friendship with the president of a company sponsoring a project before the Corporation was not a conflict of interest, despite noting it involved "the risk of favoritism and may create an impression of a conflict of interest." In this instance, the ethics officer advised the director that he need not disclose this friendship to the board. In contrast, in a November 1983 memorandum, the Corporation's ethics officer stated that another director's friendship with the president of a company sponsoring a project before the Corporation was a conflict of interest. Quoting from the Corporation's standards of conduct policy, the ethics officer advised the director that

". . . the Corporation expects that its directors, officers, and employees will avoid any action, whether or not specifically prohibited, which might result in, or create the appearance of, giving improper preferential treatment to any person, or which might adversely affect the confidence of the public in the integrity of the Corporation."

Therefore, the ethics officer recommended, in spite of the absence of a financial interest, that the director disclose this friendship to the board which he did.¹⁵

According to the ethics officer, there are differences in these two situations. In the first situation, the director asked the ethics officer for a conflict of interest determination on the basis of the director's reports of financial interest, his personal friendship and a business relationship between the director's cousin and the company sponsoring the project before the Corporation. Because the director had no reported financial interests in the respective company, the ethics officer advised the director that his personal friendship with the president of the respective company and the business relationship involving the director's cousin did not represent a conflict of interest. In the second situation, the director asked the ethics officer for a conflict of interest determination on the basis of his personal friendship. Because the director had a personal friendship with the president of the respective company, the ethics officer advised the director that his personal friendship did represent a conflict of interest.

¹⁵A conflict of interest is generally limited to financial interests which can be quantifiably defined. The board of directors, in this situation, determined that the friendship was too inconsequential to affect this director's services for the Corporation.

However, we believe the situations are very similar. In each, neither director had a financial interest in the respective company but they both involved a personal friendship. Therefore, we believe the positions taken by the ethics officer should have been the same.

Another example of an inconsistent conflict of interest determination began in June 1983 when a Corporation officer submitted a request for a conflict of interest waiver. In this case, the Corporation's ethics officer determined that the officer's ownership of 200 shares of stock amounting to about \$7,800 in a particular company sponsoring a project before the Corporation was too inconsequential to affect the officer's services for the Corporation. Therefore, the ethics officer granted the officer a waiver. However, in September 1983, the ethics officer reversed himself and recommended that the officer dispose of the stock, which he reported doing.

According to the ethics officer, this occurred because the officer submitted a new request for a conflict of interest waiver when he again began reviewing the project sponsored by the company in which he had a stock interest. Upon receiving this second request, the ethics officer assumed that this officer had purchased an additional 200 shares of stock. On that basis, and without checking with the officer, the ethics officer said he made his recommendation that the officer dispose of the stock.

In our review of the officer's request for waiver, it was clear to us that the officer was referring to the same 200 shares of stock. When we brought this matter to the attention of the ethics officer, he told us that he had made two different determinations. We believe it would have been prudent if the ethics officer had double-checked with the officer before making his second determination. If he had done so, he probably would have avoided making two different decisions resulting in an inconsistent determination about the acceptability of the officer's continued ownership of the stock.

In addition to inconsistent conflict of interest determinations, we also identified instances of a lack of documentation in the conflict of interest determinations made. For example, in April 1982, one Corporation officer wrote to the Senate Committee on Energy and Natural Resources and said that, if confirmed, he would sell his stock interests in two energy companies sponsoring projects before the Corporation. However, during our review, the officer's financial disclosure file indicated that the officer was still in possession of the particular stock interests but no information was in the officer's file to explain why.

At our request, the Corporation's ethics officer reviewed this matter and said that, just after the confirmation hearings, one of the two particular energy companies withdrew from sponsoring a project before the Corporation. Therefore, he saw no reason

for this officer to sell his financial interest in the energy company that withdrew. The ethics officer said that, for the other stock interest, he checked with this officer and was told that the officer was no longer in possession of the stock.

We believe, however, that consistent with Corporation policy, the ethics officer should have adequately documented the disposition of this matter. To an outside party who had obtained the officer's letter to the Senate Committee on Energy and Natural Resources and the officer's reports of financial disclosure, it would appear that this officer was involved in a direct and specific conflict of interest situation. Such appearances adversely affect public confidence in the integrity of the Corporation.

Another example of a lack of documentation involved a Corporation director's prior employment. Based on his 1982 statement, a Corporation director was a former partner and managing director in a company which became involved in sponsoring several projects before the Corporation. Despite this, there exists no documentation regarding the possible conflict of interest aspects of the situation. According to the ethics officer, he believed that the director had not been associated with his former company for 5 years and, likely as not, the company was not involved with synthetic fuel projects then. Thus, the ethics officer told us he did not pursue the situation with the director but instead concluded there was no conflict of interest and no reason to document the situation. We believe, however, that some uncertainty exists in whether the director had been associated with his former company since leaving their employ. We also believe, based on the Corporation's standard of conduct policy, the appearance of a conflict of interest existed. For that reason, the ethics officer should have investigated the situation and documented his investigation in writing.

Conclusion and recommendation

The number of instances we found of inconsistent conflict of interest determinations or a lack of documentation of the determinations made represents about one-fifth of the total number of conflict of interest determination cases of the Corporation. Given the trust confided in the Corporation by the Energy Security Act for the private sector development of commercial synthetic fuel projects, the ratio of these instances to the total seems too important to overlook. Therefore, we believe that the Corporation should improve its conflict of interest efforts by ensuring that conflict of interest decisions are adequately supported and documented and consistent with Corporation policies and procedures. By doing this, we believe the Corporation can provide a clearer signal to its officers and employees regarding the conduct expected of them and help prevent conflicts of interest or such appearances in the future.

Therefore, we recommend that the Chairman, U.S. Synthetic Fuels Corporation, require the ethics officer to ensure that conflict of interest decisions are consistent and the reasons for the decisions are documented in the Corporation's files.

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