

January 26, 2009

Administrator Lisa Jackson  
U.S. Environmental Protection Agency  
Ariel Rios Federal Building  
1200 Pennsylvania Ave., NW  
Washington DC 20460

Dear Ms. Jackson:

Congratulations on your confirmation to lead the U.S. Environmental Protection Agency. Please do not hesitate to contact PEER if you think we can be of assistance in the days ahead.

We were heartened to hear you speak during your confirmation hearing and in your January 23, 2009 all-employee e-mail about your desire to foster “scientific integrity”, “the rule of law” and “transparency”. We urge you to immediately translate these sentiments into concrete, enforceable agency policies. As President Obama has done in issuing a series of directives on openness and ethics, PEER strongly advocates that you declare specific policies that outlaw gag orders, forbid political rewrites of scientific findings and hold managers accountable for actions found to be illegal.

In a news interview last week, you reportedly stated, “The most important thing right now is to find a way to empower the agency workforce again to make them know that they're really important.” The best way to accomplish that is to adopt policies which directly protect EPA specialists and put managers on notice that violations will not be tolerated.

In December, PEER made a presentation to a portion of the presidential transition team dealing with EPA. We are resubmitting these suggestions to you and commend them for incorporation into agency policy at the earliest opportunity:

**1. Protect Science and Scientists from Political Interference.** Agency scientists currently have little legal protection when protesting or disclosing inappropriate alteration of technical documents. EPA could remedy this by adopting formal policies that –

- Forbid alteration of the substance of technical documents for non-technical reasons unless the basis is included as a part of the document;
- Prohibit adverse personnel actions or other discrimination in retaliation for voicing a reasonable scientific or technical finding, disagreement or distinction. In other words, honesty would become an EPA policy; and
- Explicitly encourage reporting of deviations from these policies or scientific standards in agency materials.

By adopting these policies, EPA would, by operation of law, extend Whistleblower Protection Act (which protects disclosure of any violation of agency policy) coverage to its scientists.

**2. Secure Agency Scientists' Ability to Publish.** EPA lacks clear guidelines for how scientists may publish on their own in peer-reviewed or other publications. Other science-based agencies such as NASA and NOAA have such guidelines.

**3. End the Gag Orders.** Currently, EPA is going so far as to order its staff to “not respond to questions or make any statements” if contacted by congressional investigators, reporters or even by its own Office of Inspector General.

In your all-employee e-mail of January 23<sup>rd</sup> you wrote that that –

“In 1983, EPA Administrator Ruckelshaus promised that EPA would operate ‘in a fishbowl’ and ‘will attempt to communicate with everyone from the environmentalists to those we regulate, and we will do so as openly as possible.’ I embrace this philosophy.”

Yet, in this statement you do not commit to officially re-adopt the “fishbowl” policy (which was never rescinded but clearly no longer reflects agency practice). PEER advocates that you take that next step and move beyond the philosophical plane during these critical first days in office.

**4. Adopt an Open Door Policy with Congress.** EPA should, as a matter of policy, allow its scientists and technical specialists to communicate findings directly to Congress.

During the Bush administration there have been instances where scientists were constrained from communicating findings directly to Congress. These restraints violate prohibitions against interfering with the communication by a federal employee to Congress, specifically the Lloyd Lafollette Act (5 USC §7211) which provides –

“The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.”

EPA should have rules which specifically safeguard employees' Lafollette rights.

**5. Make the “Rule of Law” a Rule of EPA.** Fostering respect for rule of law will be problematic unless those political appointees and managers who perpetrate scientific fraud or manipulation or who make decisions that are contrary to law suffer negative career consequences. In many instances, miscreant managers are actually rewarded or promoted.

The most efficient way to identify scientific fraud or official malfeasance is to examine federal lawsuit rulings (or forced settlements) against the agency. In matters in which a legal/scientific standard is at issue, as in most every EPA case, there will invariably be an act of scientific misconduct by agency management. The officials responsible for making decisions that violate federal law should be disciplined and/or removed.

**6. Sanction Agency Scientist Participation in Professional Societies.** Agency ethics guidelines discourage agency scientists from more than passing involvement with professional societies dedicated to raising and protecting scientific standards as the sources of potential conflict of interest. EPA should make it clear, as a matter of policy, that employee involvement (such as serving on boards) with professional scientific societies is not a real or apparent conflict of interest but is the opposite – an activity which furthers the agency mission.

**7. Restore Bottom-Up Communication with Agency Scientists on Matters Affecting Them.** On matters ranging from the closure of the libraries to which IT system will be used, agency scientist input has not been solicited at EPA. EPA should revive its Partnership Council as a meaningful forum for discussion of non-bargainable issues by agency management and those they purport to manage.

These are all concrete steps that are now within your power to mandate. Moreover, we would argue that failure to take these steps would be a telling signal that your confirmation pledges may be more rhetoric than reality.

As you know, PEER has been critical of your tenure while serving as Commissioner for New Jersey's Department of Environmental Protection. We hope that our concerns and criticisms are misplaced – and the best way to demonstrate that would be to take these steps that prevent these very abuses.

Please prove us wrong by putting enforceable rules in place that cement the protections for scientific integrity, transparency and rule of law of which you have spoken so eloquently.

Sincerely,

Jeff Ruch  
Executive Director