

From: Message from the Administrator
To: All EPA Employees
Date: 04/23/2009 01:47 PM
Subject: Transparency in EPA's Operations

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MEMORANDUM

SUBJECT: Transparency in EPA's Operations

FROM: Lisa P. Jackson
Administrator

TO: All EPA Employees

In my testimony before the Senate Committee
on Environment and Public Works and in my January

23, 2009, memorandum to all employees, I expressed my commitment to uphold the values of transparency and openness in conducting EPA operations. President Obama recently said in a memorandum to agency heads: "Transparency promotes accountability and provides information for citizens about what their Government is doing. Information maintained by the Federal Government is a national asset." I am asking each one of you to help me ensure EPA operates in full compliance with this principle.

The success of our environmental efforts depends on earning and maintaining the trust of the public we serve. The American people will not trust us to protect their health or their environment if they do not trust us to be transparent and inclusive in our decision-making. To earn this trust, we must conduct business with the public openly and fairly.

In 1983, then-Administrator William Ruckelshaus promised that under his leadership, EPA would operate "in a fishbowl." I wish to reaffirm this commitment and take the opportunity to provide guidelines about how we will ensure transparency in our interactions with all members of the public. These guidelines are intended to maintain the fairness and openness of our operations and thus strengthen public confidence in our decisions. I am relying on EPA employees to use their good judgment to conduct themselves with the openness and integrity that alone can guarantee public trust in EPA.

General Principles

In all its programs, EPA will provide for the fullest possible public participation in decision-making. This requires not only that EPA remain

open and accessible to those representing all points of view, but also that EPA offices responsible for decisions take affirmative steps to solicit the views of those who will be affected by these decisions. This includes communities of color, Native Americans, people disproportionately impacted by pollution, small businesses, cities and towns working to meet their environmental responsibilities, and others who have been historically underrepresented in EPA decision-making. EPA will not accord privileged status to any special interest, nor will it accept any recommendation or proposal without careful, critical, and independent examination.

Appointment Calendars

To keep the public fully informed of my contacts with interested persons, I have directed that a working copy of my appointment calendar, showing meetings with members of the public, be provided to the EPA Office of Public Affairs, where it will be available to the public each day on the EPA Web site. I also direct other senior Agency officials, including the Deputy Administrator, the Assistant Administrators, and the Regional Administrators, to make their working appointment calendars available to the public in a similar fashion.

Freedom of Information Act Policy

As President Obama has stated, the Freedom of Information Act should be administered with a clear presumption that openness prevails. All Agency personnel should ensure that this principle of openness is applied to the extent possible when responding to a FOIA request. Managers should give their staffs and the Agency's FOIA professionals the support needed to satisfy

FOIA's transparency requirement in as timely and efficient a manner as possible. In accordance with guidance issued by Attorney General Holder on March 19, 2009, EPA offices should exercise their discretion in favor of disclosing documents whenever possible under the FOIA. Offices should assert an exemption to disclosure only where the Agency reasonably foresees that disclosure would harm an interest protected by an exemption or disclosure is prohibited by law. Offices should also take steps to make information public on the Agency's Web site without waiting for a request from the public to do so. More detailed FOIA implementation procedures will be provided in the near future to assist you in carrying out this important government responsibility.

Because EPA is a public regulatory agency and employer to about 18,000 employees, EPA staff may come into possession of certain information that may need to be protected from disclosure under FOIA, including certain contract or business data, trade secrets, or personal privacy information. Although the Agency's business is to be conducted in an open and accountable manner, we must also ensure that information entitled to special protection is handled with the utmost care and in full compliance with all applicable laws and regulations. Questions about whether special protections apply to certain information should be directed to the Office of General Counsel's General Law Office.

Rulemaking Proceedings

Much of EPA's business is conducted through rulemaking. It is crucial that we apply the principles of transparency and openness to the rulemaking process. This can only occur if EPA clearly explains the basis for its decisions and

the information considered by the Agency appears in the rulemaking record. Therefore, each EPA employee should ensure that all written comments regarding a proposed rule received from members of the public, including regulated entities and interested parties, are entered into the rulemaking docket.

Robust dialogue with the public enhances the quality of our decisions. EPA offices conducting rulemaking are therefore encouraged to reach out as broadly as possible for the views of interested parties.

However, while EPA may and often should meet with groups and individuals, we should attempt, to the maximum extent practicable, to provide all interested persons with equal access to EPA. In addition, it is essential to ensure that the public receives timely notice, as far as practicable, of information or views that have influenced EPA's decisions. This means that EPA employees must summarize in writing and place in the rulemaking docket any oral communication during a meeting or telephone discussion with a member of the public or an interested group that contains significant new factual information regarding a proposed rule.

Questions about how to handle comments and other communications regarding a proposed rule should be directed to the appropriate program office personnel, attorneys in the Office of General Counsel, or regional staff working on the specific rulemaking.

I am committed to fulfilling President Obama's direction to agency heads to make use of tools and technology to increase outreach and interaction with the public. Public participation in Agency rulemaking proceedings may take a variety of forms, including public hearings and meetings,

workshops, forums, focus groups, surveys, roundtables, Federal Register notice-and-comment procedures, advisory committee meetings, informal meetings with interested parties, internet-based dialogues, and other opportunities for informal dialogue, consistent with applicable legal requirements. I encourage our staff to be creative and innovative in the tools we use to engage the public in our decision-making.

Litigation and Formal Adjudication

EPA is engaged in a wide range of litigation. The conduct of litigation by the Agency should reflect the principles of fairness and openness that apply to other EPA activities. However, we must also protect privileged litigation and enforcement-sensitive information from unauthorized disclosure. Communication with parties involved in litigation with EPA about that litigation should be through an attorney representing EPA in the case. Program personnel who receive inquiries about pending litigation from persons who are not parties to the litigation should consult with an attorney representing EPA in the case before responding. If you do not know which attorneys are representing EPA in a specific case, contact knowledgeable EPA lawyers, including the Office of General Counsel, the Office of Enforcement and Compliance Assurance, or an Office of Regional Counsel, as appropriate.

Formal adjudications (including certain administrative penalty proceedings and pesticide cancellation proceedings) are also governed by specific requirements that limit communications between EPA staff and interested parties. These limitations appear in the various EPA rules governing those proceedings. Information about these rules is available from the Office of General Counsel and on the EPA Intranet.

Contacts with Congress and the Press

EPA often receives requests for records or information from Congress, i.e. the Speaker of the House, the President of the Senate, the Chair of a Committee or Subcommittee with jurisdiction over EPA. It also receives informal requests from individual members of Congress and their staffs. I recognize the importance of Congressional oversight and encourage our programs to provide Congress with the information necessary to satisfy its oversight and legislative interests to the extent possible and consistent with our Constitutional and statutory obligations. Information requests from Congress should be handled in consultation with managers of the affected EPA programs and our legislative affairs staff in the Office of Congressional and Intergovernmental Relations.

EPA also should be accessible to the press, which performs a vital role in informing the public about EPA's actions. As we respond to press inquiries, the EPA staff should respect our internal deliberative processes and strive for accuracy and integrity in our communications. This will ultimately enhance public trust in the Agency. When interacting with the press in the performance of your official duties, please coordinate with the managers of your program and media relations experts in the Office of Public Affairs.

Nothing contained in this memorandum interferes with your right to petition or to furnish information to Congress or a Member of Congress, as provided under applicable law, or to engage in protected whistleblowing activities.

Communications Generally

The Office of Public Affairs plays a central role in shaping the Agency's communications with the public. OPA will be providing further guidance on how our programs and regions should coordinate with it on the preparation of messaging materials and interactions with the press.

Conclusion

I have the utmost confidence in the ability of EPA's workforce to promote full public involvement and openness in all EPA affairs. I believe this will enhance the credibility of the Agency, boost public trust in our actions and improve the quality of our decisions. In short, we will let more sunlight into our Agency. I look forward to hearing any additional ideas you may have on how we can achieve this goal.

As I continue to work with all of you, I plan to provide further thoughts on how we can strengthen EPA's public role in serving the needs of the public and advancing our environmental protection mission.