



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

SUBJECT: "Ex Parte" Contacts in EPA Rulemaking
FROM: The Administrator
TO: Addressees

In this memorandum I set forth the guidelines all EPA employees should follow in discussing the merits of proposed rules with interested persons outside the Agency during the period between proposal and promulgation. The Deputy Administrator and I and our immediate staffs will also observe these guidelines.

The General Counsel has recently informed you that such conversations might result in a rule being held illegal if they took place without notice and opportunity for other interested persons to participate. That advice was based on a recent decision of the United States Court of Appeals for the District of Columbia Circuit. Home Box Office Inc. v. FCC, D. C. Cir. No. 75-1280 (decided March 25, 1977). A subsequent opinion by the same court has moderated that legal danger substantially. Action for Childrens Television v. FCC, D. C. Cir. No. 74-2005 (decided July 1, 1977).

However, the legal danger has not disappeared. More fundamentally, I do not believe that EPA should base or appear to base its regulatory decisions on information or arguments presented informally that do not appear on the public record. Accordingly, I am establishing the following guidelines.

Behavior during crucial period between Proposal and Promulgation

During the period between proposal and promulgation of a rule all employees may and should be encouraged to respond to inquiries about the rule; explain how it would work, and attend public meetings of interested groups (such as trade association conventions).

During this period agency employees may (and often should) hold meetings with interested persons for the purpose of better understanding any technical scientific and engineering issues involved or discussing

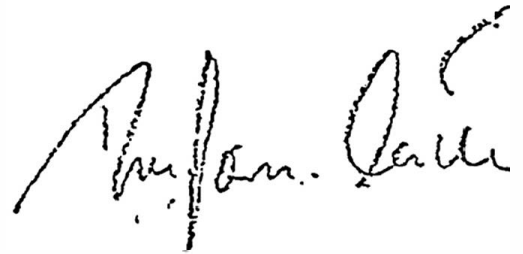
the broader questions involved. In all cases, however, a written summary of the significant points made at the meetings must be placed in the comment file.

This requirement applies to every form of discussion with outside interested persons whether at a trade association meeting, at EPA, or over the telephone as long as the discussion is significant. The memorandum should be prepared and forwarded within two or three days of the meeting at the latest. All new data or significant arguments presented at the meeting should be reflected in the memorandum. Discussions of generalities or simple explanations of how the rule would work need not be included.

I will continue to explore with the General Counsel's office and others whether further actions to ensure that we provide full notice and opportunity for comment in all our procedures are necessary.

ADDRESSEES

Deputy Administrator
Assistant Administrators
Deputy Assistant Administrators
Office Directors
Regional Administrators
Associate General Counsels
Regional Counsels

A handwritten signature in black ink, appearing to read "Stephen L. Carter". The signature is written in a cursive style with a large, sweeping initial "S".