

MEMORANDUM

SUBJECT: Contacts with Persons Outside the Agency

TO: All EPA Employees

When I recently appeared before the Senate Committee on Environment and Public Works, I promised that EPA would operate "in a fishbowl." I said, "We will attempt to communicate with everyone from the environmentalists to those we regulate and we will do so as openly as possible." Therefore, I believe it is important to set out for the guidance of all EPA employees a set of basic principles to guide our communications with the public.

In formulating these principles I considered more stringent restrictions on contacts with those outside the Agency than those described below. At my request, my staff met with staff members of the Administrative Conference of the United States to discuss these issues. This organization is an independent agency that develops improvements to the legal procedures by which Federal agencies administer their programs. Based on the recommendations of the staff members of the Administrative Conference and those of the Office of General Counsel, I am convinced that restrictions beyond those set out below would unnecessarily inhibit the free flow of information and views. In adopting these flexible procedures I am relying on EPA employees to use their common sense and good judgment to conduct themselves with the openness and integrity which alone can ensure public trust in the Agency.

General Principles

EPA will provide, in all its programs, for the fullest possible public participation in decision-making. This requires not only that EPA employees remain open and accessible to those representing all points of view, but also that EPA employees responsible for decisions take affirmative steps to seek out the views of those who will be affected by the decisions. EPA will not accord privileged status to any special interest group, nor will it accept any recommendation without careful examination.

Appointment Calendars

In order to make the public fully aware of my contacts with interested persons, I have directed that a copy of my appointment calendar for each week be placed in the Office of Public Affairs and made available to the public at the end of the week. The Deputy Administrator, and all Assistant Administrators, Associate Administrators, Regional Administrators, and Staff Office Directors shall make their appointment calendars available in a similar manner.

Litigation and Formal Adjudication

EPA is engaged in a wide range of litigation, both enforcement and defensive in nature. All communication with parties in litigation must be through the attorneys assigned to the case. Program personnel who receive inquiries from parties in matters under litigation should immediately notify the assigned attorney, and should refer the caller to that attorney.

Formal adjudications, such as pesticide cancellation proceedings, are governed by specific requirements concerning ex parte communications, which appear in the various EPA rules governing those proceedings. These rules are collected and available in the Office of General Counsel, Room 545, West Tower. I will conduct myself in accordance with these rules, and I expect all EPA employees to do the same.

Rulemaking Proceedings

In either formal or informal rulemaking proceedings under the Administrative Procedures Act, EPA employees must ensure that the basis for the Agency's decision appears in the record. Therefore, be certain (1) that all written comments received from persons outside the Agency (whether during or after the comment period) are entered in the rulemaking docket, and (2) that a memorandum summarizing any significant new factual information or argument likely to affect the final decision received during a meeting or other conversations is placed in the rulemaking docket.

You are encouraged to reach out as broadly as possible for views to assist you in arriving at final rules. However, you should do so in a manner that ensures, as far as practicable, that final decisions are not taken on the basis of information or arguments which have not been disclosed to members of the public in a timely manner. This does not mean that you may not meet with one special interest group without inviting all other interest groups to the same meeting, although all such groups should have an equal opportunity to meet with EPA. It does mean, however, that any oral communication regarding significant new factual information or argument affecting a rule, including a meeting with an interest group, should be summarized in writing and placed in the rulemaking docket for the information of all members of the public.

William D. Ruckelshaus