

From: Message from the Administrator

Sent: Monday, July 30, 2018 1:13 PM

To: Message from the Administrator <messagefromtheadministrator@epa.gov>

Subject: Public Participation and Transparency in EPA Operations



Colleagues,

Throughout the history of the U.S. Environmental Protection Agency, Administrators have reaffirmed a commitment to transparency in our agency's operations. Since 1983, when Administrator Ruckelshaus first issued a memorandum about contacts with persons outside the EPA, these memoranda have become known as the "fishbowl memos" because they have stressed that the agency should operate openly and transparently for all to see, as if it were in a fishbowl. This memorandum reaffirms those commitments.

The mission of EPA is to protect human health and the environment. We exist to serve the public. As such, the public should trust our work. We are committed to earning and maintaining the public's trust through transparency and accountability in our actions and civility and fairness in our public participation processes. The following principles and protocols will guide our efforts. I encourage all EPA employees to uphold the contents of this memorandum and conduct themselves and their business in a manner worthy of the public's trust and confidence. Our success as an agency depends on it.

General Principles

In all its programs, the EPA must provide for the fullest possible public participation in our decision making. This requires that EPA staff not only remain open and accessible to those representing all points of view, but also that EPA employees responsible for decision-making take affirmative steps to seek out the views of those who will be affected by the decisions, including communities of color, Native Americans, people disproportionately impacted by pollution, small businesses, the governments of states, cities and towns working to meet their environmental responsibilities and those who may have been underrepresented in EPA decision making. The EPA will not accord privileged status to any special interest and will not accept any recommendation or proposal without careful, critical and independent examination.

Appointment Calendars

To make the public fully aware of my contacts with interested persons, I have directed that a copy of my appointment calendar be provided to the Office of Public Affairs and made available to the public on the EPA website. I have also directed that senior officials including the Deputy Administrator, Assistant Administrators, Associate Administrators and Regional Administrators

make their appointment calendars available to the public in a similar manner.

Rulemaking Proceedings

Much of the EPA's business is conducted through rulemaking. EPA employees must ensure that the basis for the agency's decision appears in the public record. 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 and thoughtfully considered as decisions are made. This allows the EPA to clearly explain the basis for its decisions.

Robust and civil dialogue with the public enhances the quality of our decisions. EPA offices conducting rulemaking decisions are therefore encouraged to reach out broadly for the views of interested parties. This does not mean that EPA personnel may not meet with one party without inviting all parties and views to the same meeting. However, when meeting with groups and individuals, we should attempt, to the maximum extent practicable, to provide all interested persons with equal access to the EPA.

In addition, public participation in EPA rulemakings and decision making may take a variety of forms. Public hearings, meetings, workshops, forums, focus groups, surveys, roundtables, formal notice and comment in the Federal Register, advisory committee meetings, informal meetings with interested parties, internet-based dialogues and other informal dialogues, which are consistent with our legal requirements, are all ways and tools to engage with the public and build confidence in the EPA's decision making.

Finally, it is essential to ensure that the public receives timely notice, as far as practicable, of information or views that have influenced the 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.

Litigation and Formal Adjudication

The EPA is constantly engaged in a wide range of litigation. The conduct of litigation by the EPA should reflect the principles of fairness and openness that apply to other EPA activities. We must, however, protect privileged litigation and enforcement-sensitive information from unauthorized disclosure.

Communication with parties involved in litigation with the EPA about that litigation should be through an attorney representing the agency in the case. Program personnel who receive inquiries about pending litigation from a person who is not a party to the litigation should consult with an attorney representing the EPA in the case before responding. If you do not know which attorneys are representing the EPA in a specific case, contact the Office of General Counsel, the Office of Enforcement and Compliance Assurance or your Office of Regional Counsel.

When negotiating consent decrees and settlement agreements, the EPA will seek public comment on proposed consent decrees and settlement agreements as practicable, always remain within our statutory authority and engage regulated communities, states and interested stakeholders when settling litigation.

Formal adjudications (including certain administrative penalty proceedings and pesticide cancellation proceedings) are also governed by specific requirements that limit communication 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

The EPA often receives requests for records or information from leadership offices of the U.S. Congress and Congressional committees with jurisdiction over the laws that the EPA administers. It also receives information 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 senior managers of the affected EPA program and our legislative affairs staff in the Office of Congressional and Intergovernmental Relations.

The EPA should also be accessible to the press, which performs a vital role in informing the public about the EPA's actions. As we respond to press inquiries, 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. The Office of Public Affairs plays a critical role in shaping the agency's communication with the public. When interacting with the press in the performance of your official duties, please coordinate with the senior managers of your program office and the media relations staff 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.

Freedom of Information Act Requests

The Freedom of Information Act encourages accountability through transparency. Pursuant to the FOIA, any person has the right to access agency records, except where the information is protected from disclosure. The agency is committed to conducting its business in an open and transparent manner and will issue a separate memorandum on its efforts to ensure that the EPA is meeting its FOIA obligations.

Conclusion

Guided by principles of open and robust public participation, the EPA will continue to serve the American people by protecting human health and the environment and working to ensure all Americans have access to clean and safe air, land and water. I am truly honored to be working

with all of you who have devoted your careers to help ensure a better and healthier environment for our future generations.

Andrew R. Wheeler
Acting Administrator