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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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December 7, 2007

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The Honorable Stephen L. Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Johnson:

We are writing to inquire about the current directives to personnel at the Environmental Protection Agency (EPA) regarding openness and transparency in the conduct of Agency business. From 1983 until at least 2001, every EPA Administrator issued a memorandum clearly articulating an Agency policy of openness and transparency. We strongly concur with these past administrators that the public's interests are best served when Agency business is conducted in the open, without according privileged status to any special interest.

A clearly articulated EPA policy embracing openness and transparency in the conduct of Agency business dates back to 1983 when William Ruckelshaus, the first Administrator of EPA, returned to the Agency for his second term as Administrator. At that time, he promised that EPA would operate openly, as if it were "in a fishbowl." Mr. Ruckelshaus had been brought back to help restore the public's trust in the Agency after a scandalous period at EPA that ended with the forced resignation of Administrator Anne Gorsuch Burford. To help rehabilitate the Agency, he issued the first "Fishbowl" Memo instructing EPA employees "to conduct themselves with the openness and integrity which alone can ensure public trust in the Agency." The Fishbowl Memo laid out general principles of openness and transparency, as well as specific requirements for appointment calendars, litigation and formal adjudication, and rulemaking proceedings.

Every Administrator since Mr. Ruckelshaus has issued a Fishbowl Memo, until the current Administration. Attached are the Fishbowl Memos that governed Agency employee conduct from 1983 until at least 2000. Very few changes have been made to the initial openness requirements imposed by Mr. Ruckelshaus. All Memos reiterated the importance of an open process in maintaining public trust in the Agency.

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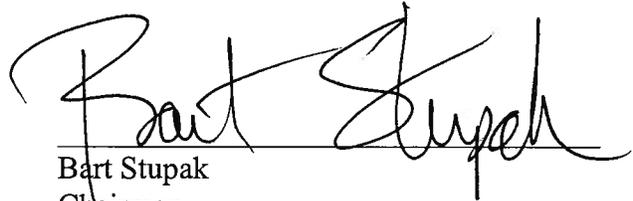
Committee staff has been unable to locate Fishbowl Memos issued during this Administration. We are interested in learning what directives currently apply to Agency employees regarding the matters that were covered in the Fishbowl Memos. Is the Fishbowl Memo issued by Administrator Browner on August 6, 1993, still in effect? If not, has a subsequent memo or directive been provided to update guidance to Agency personnel regarding the matters addressed in the 1993 Fishbowl Memo? If there is a new memo or directive, please provide it to the Committee. If there is no one document that currently summarizes or sets forth Agency policy on these matters, please answer the attached questions. Please respond by no later than Monday, December 17, 2007.

Thank you for your attention to this matter. If you have any questions, please contact us or have your staff contact Lorie J. Schmidt, Richard A. Frandsen, or John Arlington of the Committee staff at (202) 225-2927.

Sincerely,



John D. Dingell
Chairman



Bart Stupak
Chairman
Subcommittee on Oversight and
Investigations

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Ed Whitfield, Ranking Member
Subcommittee on Oversight and Investigations

QUESTIONS TO ADMINISTRATOR JOHNSON REGARDING POLICIES
ON OPENNESS IN CONDUCTING AGENCY BUSINESS

1. Administrators Browner and Reilly both stated that the Agency must conduct its business openly and fairly. Is it currently the Environmental Protection Agency policy that EPA employees should conduct the Agency's business in an open and fair manner? If not, please state your current policy and describe how it differs from that articulated in the Browner and Reilly memoranda.
2. Administrator Browner's memorandum states that: "In all its programs, EPA must provide for the most extensive public participation possible in decision-making. This requires that we all remain open to all points of view and take affirmative steps to solicit input from those who will be affected by decisions. Our willingness to remain open to new ideas from constituents, and to incorporate them where appropriate, is absolutely essential to the execution of the Agency's mission." Similar language appears in all of the other Fishbowl Memoranda.

Is the quoted language an accurate statement of current Agency policy? If not, please state your current policy and explain how it differs from the stated policy of past Administrators.

3. All of the Fishbowl Memoranda state that "the Agency must not accord privileged status to any special interest, nor accept any recommendation or proposal without careful, critical examination."

Is the quoted language an accurate statement of current Agency policy? If not, please state your current policy and explain how it differs from the stated policy of past Administrators.

4. All of the Administrators from 1983 to 2000 stated that their appointment calendars would be made available to the public "to keep the public fully informed of [the Administrator's] contacts with interested parties." Is this your policy? If not, please state your current policy and explain how it differs from the policy of past Administrators. All of these Administrators also required or encouraged the Deputy Administrator, all Assistant Administrators, Associate Administrators, Regional Administrators, and Staff Office Directors to make their appointment calendars available, as well. Is this your current policy? If not, please state your current policy and explain how it differs from the policy of past Administrators.
5. Administrator Browner's memorandum states that: "Formal adjudications (*e.g.*, pesticide cancellation proceedings) are governed by specific requirements concerning ex parte communications in the various EPA rules governing those proceedings. These rules are collected and available in the Office of the General Counsel, Room 537 West Tower. I will conduct myself in accordance with these rules, and I expect all EPA employees to do the same." Nearly identical language appears in the other three Fishbowl Memoranda.

Is the quoted language an accurate statement of current Agency policy? If not, please state your current policy and explain how it differs from the stated policy of past Administrators.

6. With respect to rulemaking proceedings, Administrator Browner's memorandum directs Agency staff that "[a]ll written comments received from people outside the Agency (whether during or after the comment period) are entered into the public record for the rulemaking," and that "[a] brief memorandum summarizing any significant new data or information likely to affect the final decision that is received during a meeting or other conversation is placed in the public record." Similar language appears in the other three Fishbowl Memoranda.

Is the quoted language an accurate statement of current Agency policy? If not, please state your current policy and explain how it differs from the stated policy of past Administrators.

7. Administrator Browner's memorandum tells Agency staff that she "encourage[s] you to solicit views from the broadest possible spectrum of interested parties in arriving at final rules." Similar language appears in the other three Fishbowl Memoranda.

Is the quoted language an accurate statement of current Agency policy? If not, please state your current policy and explain how it differs from the stated policy of past Administrators.

8. Also with respect to the rulemaking process, Administrator Browner's Memorandum instructs staff that "[a]ll interests should have an equal opportunity to meet with EPA." Similar language appears in the other three Fishbowl Memoranda.

Is the quoted language an accurate statement of current Agency policy? If not, please state your current policy and explain how it differs from the stated policy of past Administrators.

9. Administrator Browner's Memorandum states that "EPA staff should be open and accessible to Congressional staff and the press. I rely on you to use common sense and good judgment in these interactions. I ask that you inform your Assistant Administrator's office, the EPA Press Office, and/or the Office of Congressional and Legislative Affairs promptly about all such conversations with the press or Congressional staff." The other three Fishbowl Memoranda expressed similar policies with respect to communications with the press, but did not address conversations with Congressional staff.

Is the quoted language an accurate statement of current Agency policy? If not, please state your current policy and explain how it differs from the stated policy of Administrator Browner.

10. Administrator Browner concluded her Memorandum by stating that “openness to the public furthers our mission by increasing our credibility, improving our decision-making and developing broad support for Agency initiatives,” and that “our ability to remain open to the public and to make fair, well-informed decisions is essential to our success.”

Do you agree with these statements? If not, please explain in what ways and why you disagree with them.

11. Administrators Thomas and Reilly also stated that “procedures have been established with OMB to ensure that such material received by OMB from outside parties will be placed in the EPA public record.” What specific procedures are in place in this Administration to ensure that materials from outside parties received by OMB on EPA rules are placed in the EPA public record? Please provide a copy of any documents that describe these procedures.