

February 27, 2013

The Honorable Bob Perciasepe
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Acting Administrator Perciasepe:

The Senate Environment and Public Works Committee is interested in working with you in your new role as Acting Administrator of the U.S. Environmental Protection Agency (EPA). We sincerely hope that as the current head of EPA, you will work toward fulfilling President Obama's call for increased transparency in the operations of the federal government. Furthermore, we view this as an opportunity for the EPA to be more amenable to congressional oversight efforts, as both your agency and our Committee have the shared goal of advancing transparency and accountability in government.

The use of private e-mail accounts for official business has been an issue in the past at the EPA, among other federal agencies. Such actions raise the prospect of potential violations of the Presidential Records Act¹ (PRA) and the Federal Records Act² (FRA). Additionally, using non-official accounts, as defined by the PRA and the FRA, to conduct government business will likely engender challenges to compliance with the Freedom of Information Act³ (FOIA), litigation requests, and congressional requests. We believe that with your cooperation as acting head of the EPA, we can work together to prevent these concerns from creating additional problems.

As you may know, EPA policy explicitly prohibits the use of non-EPA e-mail accounts, instructing employees to “[not] use any outside e-mail account to conduct official Agency business.”⁴ In 2008, EPA wrote to the Government Accountability Office that “EPA has a clear and consistent policy framework against the use of nongovernmental e-mail systems for official EPA business.”⁵ Regrettably, under the direction of Administrator Jackson, EPA officials frequently neglected to follow this policy, creating a widespread problem. As Acting

¹ See 44 U.S.C. § 2201.

² See 44 U.S.C. § 31.

³ See 5 U.S.C. § 552.

⁴ ENVTL. PROT. AGENCY, *Frequent Questions about E-Mail and Records* <http://www.epa.gov/records/faqs/emails.htm> (last accessed Feb. 19, 2013).

⁵ GOV'T ACCOUNTABILITY OFFICE, FEDERAL RECORDS: NATIONAL ARCHIVES AND SELECTED AGENCIES NEED TO STRENGTHEN E-MAIL MANAGEMENT, 61, GAO008-742 (June 2008).

Administrator, you are in a position to rectify this and facilitate the proper treatment of federal records.

As such, we would like to alert you to our continued interest in such matters. Specifically, we draw your attention to four violations that arose in the course of our investigation. Our purpose in outlining the following areas of concern is to draw your attention to the ongoing problem which you now have the opportunity to correct. First and foremost, we are deeply troubled by the practice of Administrator Jackson's alias e-mail account under the name of Richard Windsor, of which concern we are sure you are aware. Further, we have uncovered many instances in which EPA officials have used non-EPA accounts to conduct business, in violation of EPA policy, as previously referenced. The second instance involves the legal implications of EPA Region 8 Administrator James B. Martin's use of an Apple me.com account to conduct agency business, as delineated in our January 29, 2013 letter.⁶ Last week, Regional Administrator Martin shared with our offices his intention to resign. The third instance of concern is the use of a personal G-mail account by Deputy General Counsel Tseming Yang in the EPA's Office of General Counsel for official business purposes.⁷ Finally, the Committee has recently become aware that you used a non-official e-mail account, bob@perciasepe.org, to conduct government business in at least one instance.⁸

As we move forward with our oversight efforts, we would appreciate your full support and cooperation. We ask for a formal commitment from you in your capacity as Acting Administrator to fulfill outstanding document requests from the Senate Committee on Environment and Public Works. Please direct your attention toward aiding in the production of responsive documents to the Committee.

Thank you for your prompt attention to this matter. If you have any questions, please contact Kristina Moore with the Senate Committee on Environment and Public Works at (202) 224-6176.

Sincerely,

David Vitter
Ranking Member
Environment and Public Works

Jim Inhofe
United States Senator
Environment and Public Works

⁶ Letter from Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to James B. Martin, Adm'r, U.S. Env'tl. Prot. Agency Region 8 (Jan. 29, 1013).

⁷ See <http://www.epa.gov/epafoia1/docs/Second-Release-Part-P.pdf> (last accessed Feb. 21, 2013).

⁸ See <http://www.epa.gov/epafoia1/docs/Second-Release-Part-O.pdf> (last accessed Feb. 21, 2013).