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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
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July 6, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Andrew:

I write to congratulate you on being named Acting Administrator of the EPA and to ask you to do all that you can to restore the American people's confidence in the agency's mission, which is the protection of human health and our environment.

Scott Pruitt's record of corruption, wasteful spending on himself while attempting to slash the EPA budget and workforce, secrecy, retaliation against those who dared object, and legally questionable rulemaking proposals have been well-documented.

They say that history doesn't always repeat itself, but it often rhymes. A review of a different chapter in EPA's history reveals the truth of that adage. Mr. Pruitt's tenure at the agency brings to mind the tenure of former EPA-Administrator Anne Gorsuch, which was described as "marked by sharp budget cuts, rifts with career EPA employees, a steep decline in cases filed against polluters and a scandal over the mismanagement of the Superfund cleanup program that ultimately led to her resignation in 1983....She filled various departments at EPA with subordinates recruited from the very industries the agency was supposed to be regulating.¹"

When Ms. Gorsuch was forced to resign, President Reagan nominated William Ruckelshaus, who had served as the nation's first EPA Administrator, and who had since that time also worked on behalf of many companies regulated by EPA, to serve as Ms. Gorsuch's replacement. Much like your nomination to serve as EPA's Deputy Administrator, Mr. Ruckelshaus's industry ties² led to considerable skepticism³ when his nomination was considered by the Environment and Public Works Committee.

In his opening statement (attached), he observed that the opposition to his nomination during the two days of hearings that preceded his appearance gave him "a sense that I was witnessing my own

¹ https://www.washingtonpost.com/news/energy-environment/wp/2017/02/01/neil-gorsuchs-mother-once-ran-the-epa-it-was-a-disaster/?utm_term=.1417a04c3592

² <https://www.nytimes.com/1983/03/26/us/ruckelshaus-s-ties-split-environmental-leaders.html>

³ https://www.washingtonpost.com/archive/politics/1983/05/04/wildlife-federation-endorses-ruckelshaus-other-groups-neutral/b649ff6f-c7aa-4fee-896c-6324974f52a0/?utm_term=.13b427678ce7

lynching.” During his confirmation hearing, Mr. Ruckelshaus committed to following and enforcing environmental laws, said he would request and use the advice provided to him by EPA’s career staff, and also said: “There will be no hit list. There will be no “Big P” political decisions, there will be no sweetheart deals.... I will seek help from scientists, from environmentalists, from economists, from industrialists and from the general public... Recognizing the important oversight function that Congress must play, a better dialogue and increased trust between the legislative and administering authorities in this area will be a high priority of mine.”

After he was nominated, the Washington Post reported (attached) that he received “an emotional hero’s welcome” from the beleaguered EPA employees as he promised that “the atmosphere of the demoralized agency will change dramatically.” Within a week after he re-assumed the helm of the agency, Mr. Ruckelshaus authored the ‘fishbowl memo’ (attached) to establish strong transparency and ethics procedures at EPA. When he resigned in 1985, The New York Times said⁴ that “he has widely been credited with restoring the morale of the career employees at the agency, bringing in a cadre of competent, experienced assistant administrators and restoring much of the agency’s will and capacity to carry out the environmental laws. He also insisted that the agency’s enforcement staff step up its operations against violators of the environmental laws.”

Mr. Ruckelshaus recently opined,⁵ of Scott Pruitt’s EPA, that the “EPA should have no natural constituency but the public whose health it is mandated to protect.... the consequence of such conduct is the slow, destructive erosion of public trust in the EPA. Once trust is lost and warnings of unsafe air or contaminated water are ignored, Americans will pay the price. Without that trust, not only will people question whether they can believe their government but also business and industry will face public backlash.”

Andrew, you have been granted an enormous challenge and responsibility, but an even greater opportunity. The damage Scott Pruitt has done to the Agency will not easily be undone. While you and I have not always agreed, and will not always agree, on every environmental policy matter, it is my hope and expectation that you will carefully consider the lessons of the past as you prepare to chart the Agency’s future. My staff and I stand ready to help, and to that end, I request a meeting in the near future to discuss what we feel are some of the most important near-term steps you could take to restore confidence in the Environmental Protection Agency (attached).

With best personal regards, I am,

Sincerely yours,


Tom Carper
Ranking Member

⁴ <https://www.nytimes.com/1984/11/29/us/ruckelshaus-resigning-post-as-chief-of-the-epa.html>

⁵ https://www.washingtonpost.com/opinions/pruitt-is-turning-his-back-on-transparency-at-the-epa/2017/11/01/cd2c1b84-bd88-11e7-8444-a0d4f04b89eb_story.html?utm_term=.67fb14489d0a

Restoring Trust in the EPA

This is a non-exhaustive list that does not include all EPA actions that are of concern. Rather, this list represents ways to remedy some of Administrator Pruitt's most egregious proposals, practices and missed opportunities.

Restore transparency, trust and accountability

1. Provide daily, more detailed information about the activities of confirmed and other senior unconfirmed EPA officials.
2. Ensure that all policy and other decisions are properly documented in writing.
3. Respond to Freedom of Information Act requests in a complete, minimally redacted, and timely manner.
4. Respond to Congressional oversight letters in a complete, accurate, and timely manner.
5. Cease efforts to dramatically shrink, exclude, or retaliate against members of the EPA workforce.
6. Restore scientific information that was removed from EPA's website.
7. Advocate in support of a budget that appropriately reflects the agency's needs and responsibilities.
8. Ensure that environmental laws are enforced through enabling the detection and deterrence of potential violations and requiring appropriate monetary and/or environmental remedies.

Abandon legally questionable policies and proposals

1. Withdraw EPA's proposal to repeal air emission standards for glider trucks, which appears to largely benefit a single company while being opposed by the vast majority of industry, and was influenced by an industry-funded "study" that is currently the subject of an official investigation into research misconduct for failing to adhere to basic scientific standards.
2. Withdraw EPA's "secret science" proposal, which will require EPA—when developing rules—to rely only on scientific studies where the underlying data have been made public and are available to be reproduced. Such a policy would likely violate several laws that mandate the use of "best available science," including the Toxic Substances Control Act and Safe Drinking Water Act because it would require EPA to ignore some of the "best" scientific studies, and would also likely run afoul of the Administrative Procedure Act, which requires agencies to consider and respond to all information presented to it pursuant to a rulemaking.
3. Abandon efforts to complete the draft proposed rule that seeks to dramatically weaken vehicle fuel economy and greenhouse gas tailpipe standards and preempt California's authority to set and enforce its own greenhouse gas tailpipe standards (as well as that of the 12 additional states, including Delaware, that have adopted them). Instead, work to negotiate a 'win-win' solution on federal fuel economy and tailpipe emissions standards that can be supported by both the automobile industry and the State of California.

4. Implement the near-unanimously enacted Toxic Substances Control Act in a manner consistent with Congressional intent that new and existing chemical safety reviews be conducted for all uses of a chemical substance, and additionally, that proposed bans for some uses of three chemical substances be quickly finalized.
5. Follow the law when revising, implementing and enforcing rules to limit air pollution under the Clean Air Act, abandon efforts to weaken existing mercury and air toxics and ozone rules, and live up to the responsibility to protect downwind states from air pollution blown in from upwind states.

Senator STAFFORD. Thank you very much, Senator Simpson. Mr. Ruckelshaus, we would be glad to hear your statement.

STATEMENT OF WILLIAM D. RUCKELSHAUS, ADMINISTRATOR-DESIGNATE, ENVIRONMENTAL PROTECTION AGENCY

Mr. RUCKELSHAUS. Thank you very much, Mr. Chairman and members of this committee.

I appreciate very much those kind comments that many of you have made in your charge to me to take my new assignment seriously. I watched these committee proceedings yesterday on television, and I must confess I had a sense that I was witnessing my own lynching. Here this morning, I have a sense in part that I have been at my own funeral.

Somewhere in between, I am sure, lies the real me.

Twelve years ago I appeared before this same committee and I asked the members to recommend that the full Senate confirm me as the first Administrator of the Environmental Protection Agency. I am today asking the committee to repeat its earlier vote of confidence.

The committee has amassed more information about me than I knew existed 6 weeks ago. You have all my financial data, my personal recusal statement, my work history, and virtually everything I have said, written, or thought about the environment or public health for the last 12 years. You even have every personal letter I have been able to find in my files relating to the job of Administrator of EPA, and all of this information has been furnished by me or at my direction by the organizations with which I am affiliated.

Mr. Chairman, I am about to note in passing the personal letters that the committee has. When the President announced his intention to nominate me some 6 weeks ago, I told my staff at Weyerhaeuser and elsewhere to cooperate with the committee fully, to give them anything they wanted. I gathered all of the speeches, testimony, articles that I had written. I even gathered all my personal correspondence, and I gave all that material to my staff and told them to give it to the committee. It never occurred to me, frankly, that the Committee would want my personal correspondence, but it was requested and turned over to the committee by my staff.

I didn't realize that this had happened until last Friday. By way of explanation, Mr. Chairman, of a letter that I wrote to you on Thursday enclosing some of the correspondence that had appeared in the New York Times, I indicated to you I didn't know where it was coming from. On Friday, a member of my staff brought up the bundle he had sent and he was very proud of the fact that he had followed my instructions and turned everything over to the committee. That is how it happened.

I did find over the weekend some mention of the environment in a couple of letters that I sent to my mother which I would be glad to turn over to the committee.

She, like some other members of this committee, had a question about judgment in returning. She asked me on the phone how I could possibly take a job 10 years later in which I was not getting a promotion.

I told her she wouldn't want to hear the whole thing.

Well, I don't believe it is possible, Mr. Chairman, for this committee to know any more about me than you now do. What you see is really what you get. I will, of course, answer any questions that you might have regarding the material that I have given you, and I would respond to any questions that might have arisen at the hearing yesterday.

In this statement I will not dwell on the record before you but instead will tell you what I plan to do if confirmed, how I intend to do it and what I hope to accomplish my second time around.

Before I start, let me make clear my personal perception of the issues the EPA was created to address. To the American people, protection of public health and our national environment embodies a terribly important and enduring set of values. The survey data I have seen and my own experience strongly indicate that Americans feel more deeply committed to the protection of public health and the environment than any people on earth.

Our country, acting through Federal, State and local governments over the past two decades, has translated that commitment into a massive network of laws and regulations to protect the health of our people, the air, water and earth that they all share. As these laws attest, the debate in this country over whether we are going to protect public health and our environment has long since ended.

I completely share our Nation's commitment to the values of public health and the environment. Since first coming to EPA in 1970, I have participated in the national dialog about how to translate those values into achievable goals. I intend, while at EPA, to continue to participate, and if confirmed, many of the same arguments I have made in the past whether in or out of the government.

Now, if I am confirmed, what do I plan to do? I discussed the nature of the Administrator's job with the President and his immediate staff before he asked me to serve. We agreed that people and resources to do the job were essential ingredients of success.

My first priority will be to recruit the best people I can find to manage the agency. I am gratified that in the last 6 weeks, there have been literally thousands of offers to help. Many have come from people who were there before who have proven themselves under fire and who are willing to disrupt their lives to help their country.

I am confident that from that group and others a superior group of people can be assembled.

As to the resources to do the job, it will be a very high priority of mine to review the existing budgetary ceilings to see if additional money or people are needed to carry out the mandate of Congress. If I conclude we need more help, working with the administration, we will submit an amended 1984 budget request and supplemental 1983 budget request consistent with the 1984 amendments.

Many of you have expressed an interest in whether I intend to request additional budgetary authority or whether I will seek policy changes on virtually every program area the agency administers. These questions are hard, if not impossible, to answer in the abstract, and many of them I simply cannot properly respond to until I have a chance to review the policies and program needs in more detail.

I can offer some guidance on what I now see as high-priority issues. Much has been said and written in criticism of EPA's enforcement

policies. The questions seem to focus on three aspects of enforcement. The will, capacity and organization.

As to will, let me disabuse anyone who believes EPA, while I am there, will not have the requisite determination to enforce the laws as written by Congress. The environmental laws of this country were passed by Congress and were meant to be taken seriously by the administering authorities. I do take the Congressional charge seriously, and if I am confirmed, EPA will take that charge seriously.

We will enforce the laws of this country. We will be firm, and we will be fair. We must never forget that in a time of high emotion such as we now face where the public interest demands fairness in the enforcement of our law, the public good mirrored in the Bill of Rights demands that due process not be abandoned. The EPA I head will adhere to both principles.

I have asked the people now at EPA for a review of both the capacity to enforce, which is a resource question, and the organization of the enforcement function, which is a management question. I have had a preliminary response to both questions but have come to no final conclusions as to what makes the most sense for the agency.

The whole issue of toxic substances, as some of you have already mentioned, is of much greater prominence than when I was first at EPA. The law to regulate pesticides, FIFRA, was already enacted. There were provisions in the Clean Air Act and Clean Water Act that related to toxic substances, but only since I left has EPA established the basic structure to control the manufacture, distribution, use and ultimate disposal of toxic substances.

In the last 6 weeks, I have seen in the press that the number of problems, this has had an impact on me. Mr. Chairman and members of the committee, I had some feeling for the scope of this problem, but nothing like I received in the last 6 months by reviewing the clippings that EPA gets from all over the country relating to toxic substances. I have seen that the number of problems surfacing all over the country relating to toxic substances and toxic chemicals is truly staggering.

We have in place a complex set of laws and regulations to deal with the toxic substance problems. I certainly have no preconception whether these laws or regulations or the resources we have committed to their implementation are adequate. I do know that wise and aggressive implementation of these laws must be a very high priority of mine, and it will be.

There are other matters which will immediately demand my attention such as the reauthorization of most of the organic laws of EPA—8 out of 10 have expired—along with specific issues such as acid rain.

Last and certainly not least, I will make a concerted effort to harness the energies and the talents of the people at EPA toward the Agency's mission.

EPA's greatest resource today is the same as when we started: It's people. Mr. Chairman, when EPA was created in 1970, in the first 45 days of its existence, we received 250,000 applications for jobs from all over this country. That was an expression that was impressive to me at the time of the concern of the people of this country about the environment, and as best I can tell, that concerns has not diminished since.

If these people there are trusted, if they are included in and given clear guidance as to what is expected of them, they will perform to a very high standard. I will work hard, and they will work hard toward our common objective.

To carry this message of trust and reliance forward, I intend to personally visit and talk to as many people at EPA here and in the 10 regions and laboratories in the first few weeks after confirmation.

That is what I intend to do. How am I going to do it? In my judgment, it is important for this committee's deliberations to know what I intend to do. It is also important to know how I will do it.

The charges currently lodged against some of the people of EPA focus primarily on abuse of process. There are many policy differences, but the main allegations concentrate on the way the existing laws are administered. Without commenting on the substance of those charges, this committee should know how I intend to operate.

The existing laws will be administered as written. I will continue to bring to this committee's attention recommendations for change where I believe change is warranted, but in the meantime, ours remains a Nation of laws and not of men, and the laws will remain supreme.

As I did before when I was there, I will do now, and that is, operate EPA as honestly as I know how. There will be no hit list. There will be no "Big P" political decisions, there will be no sweetheart deals. We will attempt to communicate with everyone from the environmentalists to those we regulate, and we will do as openly as possible.

Mr. Chairman, I have already directed that my staff attempt to prepare—assuming this body confirms me—to prepare some guidance for how we will communicate so that it will be clear to everyone exactly how this communication can take place, and it will be as open as we know how to make it.

I will seek the best advice I can get on how to deal with the terribly complex problems EPA must confront. I will seek help from scientists, from environmentalists, from economists, from industrialists and from the general public. I hope to engage former administrators of EPA in a constant dialogue to take advantage of their collective wisdom.

Lastly, I hope to engage this committee—and I know, Mr. Chairman, every Committee that ever confirms anybody, and this body hears the same pledge made by the person they confirm, but I am going to do the best I can to live up to this pledge. I hope to engage this Committee, this Committee's staff and other committees of Congress and their staffs in a joint effort to improve our Nation's ability to respond to the mission of health and environmental problems facing EPA.

Recognizing the important oversight function that Congress must play, a better dialogue and increased trust between the legislative and administering authorities in this area will be a high priority of mine.

In the past weeks, I have given a good deal of thought to what I would like to do at EPA, what goals I would set for myself, what I would like to accomplish, and I thought it might be well to share with this committee at least my preliminary thoughts about those goals. First and foremost, the American people need to believe that the agency charged with protecting so many aspects of their health and their natural environment is staffed with first-rate people doing their very best. The problems EPA confronts are hard ones. Some of these prob-

lems just defy solution. Throughout, from the definition of the problem to its solution, the agency must deal with enormous scientific uncertainty. It often must act before it is clear what the optimum solution would be.

To function at all in such uncharted waters, the American people must trust EPA's motivation and ability. To insure that necessary trust will be a prime objective of mine.

I will endeavor to instill in the employees of EPA a sense of mission and dedication to excellence. I will try to convince them that EPA's mission must be carried out by people who recognize they are servants of the public and not their masters and by people who are as dedicated to fairness and civility to others as to excellence in themselves. An agency steeped in this tradition is a legacy to which I will aspire.

I will attempt to put a management system in place that can meet our goals effectively and efficiently. To accomplish this, EPA and all its elements must first understand our mission and objectives so we know what we are managing toward.

Most of EPA's mission and objectives are defined by statute. I would hope, working with the Congress, to create for the country a more effective legal framework to attain our goals. As I have stated, my obligation as an Administrator is to faithfully execute the laws of the country. In the process of such execution, I will seek to evaluate the impact of the law on both the intended and unintended targets.

Where I think we can lessen the effect on the unintended target without sacrificing our objectives, I will recommend change to the Congress. I did this at EPA before, and I will do it again.

As part of my effort to improve our legal framework, I intend to address the question of the role that the various levels of government play in administering our environmental and health laws.

Too much time is spent by one level of government overseeing the work of the other. With a more clear definition of understanding of who is supposed to do what and who pays for it, we could eliminate much of the public and private frustration over environmental laws. That is a tall order in our Federal system, but with a joint effort by the EPA, the Congress, and the States, more clarity and less redundancy is possible.

I will work toward gaining greater public comprehension of the complexities of managing risk in a free society. I also hope to enlist the scientific community in a more aggressive participation in the public dialog. In my view, the public needs to hear more of what the Administrator of a place like EPA hears regarding scientific uncertainty if they can be expected to support sound public policies.

I will work particularly hard to foster a better dialog between government and environmentalists and the regulated industries. The endless public and private acrimony that surrounds the mix of problems before EPA deflects energy, saps resources, and is ultimately debilitating to the whole effort. Over the last several years, I have become convinced that as Americans, we must first remember we all share this geography of our country, if we are to convince the rest of mankind that we must share and conserve the geography of our planet.

I have other goals regarding such things as developing new and accepted ways of measuring progress against our environmental and health goals and fashioning effective long-term strategies for controlling toxic substances.

I could go on, but accomplishing even a fraction of these objectives will be task enough. I will welcome suggestions from this committee regarding the what and how of my hopes.

I did not seek this job. But having decided to accept it, I am energized and excited by the challenge. If confirmed, I pledge to this committee and to the American people to do the best I can as long as I'm there.

Thank you, Mr. Chairman.

Senator STAFFORD. Thank you very much, Mr. Ruckelshaus, for your excellent opening statement.

I have conferred with Senator Randolph, and we would propose to our colleagues on the committee that we limit ourselves in the first round to 10 minutes per member for questions.

There will be as many rounds as necessary to satisfy all members of the committee. Questions which they wish to address to Mr. Ruckelshaus will be addressed to him, and he will have a chance to respond to them. Is there objection to following that procedure?

[No response.]

Senator STAFFORD. I hear none, and that being the case, we will start. Again, Senator Randolph and I have conferred, and we would like to propose continuing the hearing today until 1 o'clock, at least, and then starting again at 10 o'clock tomorrow morning and running as long as necessary to see that the members are satisfied in connection with questions and answers.

Is there objection to following that procedure?

[No response.]

Senator STAFFORD. Before going to questions, the Chair is delighted to see that Senator Moynihan, a most valuable member of this committee, has joined us.

Senator Moynihan, do you have any opening statements that you would like to make? We would put them in an appropriate place in the record for you.

Senator MOYNIHAN. I would like to welcome my old friend, Mr. Ruckelshaus. We were together at the time of the drafting of the Executive order which created the EPA and which is still its basis. We welcome you back, sir. May I be the first to congratulate you on a superb opening statement.

Senator STAFFORD. Mr. Ruckelshaus, in my opening statement, I alluded to the fact that some decisions are entrusted by law to the Administrator of the Environmental Protection Agency and to no other person. It has long been the collective view of this committee that there are some decisions which even the President himself cannot make, even though the Administrator is a Presidential appointee. One example is the requirement of the Clean Air Act that the Administrator establish the ambient standards for air pollutants. I would like to ask you some questions regarding your view of the Administrator's independence in the administration as well as what assurances you have received, and from whom?

But first, let me make this brief observation: After the election of 1980, but before the administration had actually changed hands, David Stockman wrote an article laying out what he called a "regulatory blueprint." This article, entitled "Avoiding a GOP Economic

RETURN

3/23/83

Wash. Post

Ruckelshaus Given an Emotional Welcome By 1,000 Employees of Embattled EPA

By Dale Russakoff
Washington Post Staff Writer

William D. Ruckelshaus returned yesterday to the embattled Environmental Protection Agency, receiving an emotional hero's welcome from more than 1,000 agency employees who applauded him noisily, laughed at his jokes and hoisted a banner reading: "How do you spell relief? RUCKELSHAUS."

Ruckelshaus, the EPA's first administrator who was nominated Monday by President Reagan to return to his old post, pledged to restore public trust in the troubled agency, to make it "adhere to an iron integrity," to respect civil servants and to "administer and enforce the laws as they're written by Congress."

Those simple promises drew thunderous ovations from the employees, who crowded into Waterside Mall, where the agency is headquartered, to hear Ruckelshaus' first major address since his nomination. He did not mention his predecessor, Anne M. Burford, and made no specific commitments on policy or personnel shifts, but he appeared to be sending a message that the atmosphere of the demoralized agency will change dramatically.

The mood was reminiscent, many employees said, of the early 1970s, when the agency was founded amid a national clamor for environmental protection. Many of the EPA workers said they came to the agency as young college graduates with a sense of mission and they viewed Ruckelshaus as their comrade.

"The agency and the world were different then," said Hugh Kaufman, a self-styled "whistle blower" in the EPA toxic waste cleanup program. "In the last two years, we have been very much oppressed. We had poor management, outrageous management, potential criminal mismanagement, oppression of civil servants, a feeling that we as EPA regulators were being spat on by the White House. Seeing Bill Ruckelshaus come back is like opening the gates and tearing down the bars."

Ruckelshaus waded into the

and said through tears: "I'm so happy you're back, I missed you."

Another woman put one hand on each of his shoulders and said with feeling: "The toxic waste program needs you badly." Ruckelshaus answered confidently: "Great, we're going to straighten her out."

Ruckelshaus told the employees he is convinced that Reagan "is committed to doing the job we have been assigned by Congress and to giving us adequate resources to do it," one of the few statements in the speech that was not followed by cheers. He also portrayed himself as a supporter of Reagan's positions.

Ruckelshaus indicated that he will support the administration's effort to revise the Clean Air Act and other landmark environmental laws, despite strong resistance from Congress in the last two years. White House-sponsored amendments to relax portions of the Clean Air Act have been defeated, with members of Congress denouncing them as an effort to favor industry over the public.

"We need to examine the means to achieving these goals [of environmental protection] and where we find or where we believe that better means can be used, we should ask the Congress for the authority necessary to adopt those means," he said. "In the meantime, we will administer and enforce the laws as they are written by Congress."

Interior Secretary James G. Watt said yesterday that he had talked with Ruckelshaus and was "greatly impressed with his commitment to the Reagan philosophy."

Ruckelshaus acknowledged that he had worked on behalf of many industries regulated by the EPA since leaving the Nixon administration in 1973, and said he expects close scrutiny for those ties during his Senate confirmation hearings.

As a Washington attorney he represented manufacturers of vinyl chloride and aluminum and other products. Since 1975 he has been senior vice president of the huge forest products concern, Weyerhaeuser

Co. of Tacoma, Wash., named one of the nation's "Filthy Five" companies by Environmental Action, an environmentalist lobbying group.

Weyerhaeuser has contested EPA efforts to curb spraying of forests with herbicides containing toxic chemicals, including dioxin.

"My job as a lawyer was to represent my clients. My job at Weyerhaeuser was to represent all the stakeholders in that enterprise," Ruckelshaus said. "My job as EPA administrator is the same today as it was when I held that job before, and that is to represent the public interest to the best of my ability." That comment also drew loud applause.

Ruckelshaus also hinted at plans to bring in a new team of top EPA managers, but gave no specifics other than saying that Reagan "is committed to getting the best people we can find in this agency, the best people with iron integrity." Employees cheered those words as several top EPA political appointees, targets of congressional and Justice Department probes, watched quietly. They included acting EPA Administrator John W. Hernandez, Assistant Administrator John Todhunter and general counsel Robert M. Perry.

Todhunter and Hernandez came under new fire yesterday as a draft report by a House subcommittee accused them of allowing the formaldehyde industry to influence an agency decision not to regulate the suspected cancer-causing substance. Both men have denied showing favoritism toward industry.

White House officials yesterday told presidential aides to report to White House counsel Fred F. Fielding all contacts with EPA officials in the last two years, regardless of how insignificant they may seem.

The instructions came after reports that James Medas, special assistant in the White House office of intergovernmental affairs, had not reported a discussion with ousted EPA official Rita M. Lavelle on the political impact of toxic-waste cleanup decisions.

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Environmental News

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FOR RELEASE: THURSDAY, MAY 19, 1983

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(202) 382-4355

RUCKELSHAUS
TAKES STEPS
TO IMPROVE
FLOW OF
AGENCY
INFORMATION

William D. Ruckelshaus, Administrator of the U.S. Environmental Protection Agency, today set forth a number of operating principles to carry out his pledge that EPA will operate "in a fish-bowl."

In addition, his legal staff has established a recusal system to assure his avoiding conflicts of interest and the appearance of conflicts of interest in the performance of his duties. Agency matters in which he excuses (recuses) himself from taking part will be made available to the public.

In a memorandum to all EPA employees, the Administrator said, "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.'"

Ruckelshaus said he thought it was critical to set out for the guidance of all EPA employees a set of basic principles to guide their communications with the public.

Ruckelshaus' letter covers four areas: general principles, appointment calendars, litigation and formal adjudication, and rulemaking proceedings. They call for:

-- 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

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EPA employees responsible for decisions take affirmative steps in an open manner 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 critical examination.

He added that the guidelines would be disseminated to the public for its comments. "While this is not a formal solicitation of views, we will have a 30-day waiting period in which to receive the opinions of the public. We want to get feedback from the public because of the high and continuing degree of interest in how the agency deals with the regulated community and other affected parties."

Ruckelshaus pointed out that the principles are general in nature "because you can't cover every eventuality." But he said that even while awaiting public comment which could lead to modifications, these guidelines will be in effect as agency policy.

-- Appointment Calendars. "In order to make the public fully aware of any contacts with interested persons," Ruckelshaus wrote, "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." He added that all other key EPA officials will make their appointment calendars available in a similar manner.

-- Litigation and formal adjudication. 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 to which Ruckelshaus said he would adhere and which he expected all EPA employees to meet. All adjudicatory rules governing ex parte (the interest of one party only) communications will be made available to all EPA employees and to the public to assure a policy of openness and candor.

-- Rulemaking proceedings. EPA employees must ensure that the basis for the agency's decisions appear in the record. Ruckelshaus instructed employees to be certain that all written comments received from persons outside the agency be entered in the rulemaking docket, and that a memorandum summarizing any significant new factual information likely to affect the final decision received during a meeting or other conversations be 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," Ruckelshaus said. "How-

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ever, you should do so in a manner that ensures, as far as practicable, that final decisions are not taken on the basis of information which has not been disclosed to members of the public in a timely manner."

To avoid conflicts of interest or the appearance of them, a system has been established in which agency officials will use a recusal form to warn the Administrator of issues from which he should excuse himself.

Ruckelshaus has provided a list of companies in which he is in the process of divesting his financial interests as well as a list of various public institutions with which he has been associated as guidance in determining areas where conflicts of interest could exist. (lists attached.)

Gerald H. Yamada, Deputy General Counsel and the agency's chief ethics officer, said that the Administrator must, in instances where he still has a financial involvement, excuse himself. These instances are mandatory recusals covered by statute, Yamada said.

There also are discretionary recusals in which the Administrator will recuse himself because of the appearance of an impropriety or conflict of interest. Ruckelshaus' associations with public institutions, such as the Bio-Energy Council as an example, would fall into this discretionary category, Yamada said.

Some issues will be decided on a case-by-case basis. Once program officials have provided advice in discretionary matters, a final decision will be made by the Administrator, with the advice of Yamada. In a memorandum on the subject, it was noted that specific procedures must be followed to identify and track matters involving rulemaking, correspondence, litigation and enforcement, formal adjudication, policy statements, grants and contracts.

The memo on recusal to agency officials states, "When Mr. Ruckelshaus has recused himself from participating in any particular matter, your office is not to send him any written material or give him any briefings on such matters. His recusals will be made available to the public."

Yamada said the recusal system, however, does not mean that the Administrator will not be kept informed of everything that is going on at the agency. "He has to be made aware of what is happening, even if he can't participate in some of these matters," Yamada pointed out.

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In developing the guidance principles he announced today, Ruckelshaus had his staff meet with staff members of the Administrative Conference of the United States, an independent agency that develops improvements to legal procedures used by federal agencies in administering their programs. The principles are based on recommendations made by this group and EPA's Office of General Counsel.

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NOTE:

Attachment A lists those firms in which Mr. Ruckelshaus has a financial interest and is in the process of divesting himself of his financial involvement.

Attachment B is a list of public institutions with which Mr. Ruckelshaus has been associated. There may be instances involving some of these groups in which Mr. Ruckelshaus may decide to recuse himself because of the appearance of a conflict of interest.

Until Mr. Ruckelshaus finishes divesting himself of his financial interest in the firms listed on Attachment A, he is prohibited by statute from participating in any particular matter that would involve any of the firms. Once his divestiture is completed, the firms on Attachment A will be moved to the Attachment B list.

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Attachment A

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Weyerhaeuser Company (pulp and paper manufacturing,
logging, wood and plywood products)
Cummins Engine Company, Inc. (diesel engine
manufacturing)
Peabody International Corp. (manufacture of solid
and hazardous waste cleanup equipment, manufacture of
wet and dry scrubbers and electrostatic precipitators)
Nordstrom, Inc. (wearing apparel, shoes)
Pacific Gas Transmission Company (gas transmission)
U.S. West (telephone services holding company)
United Siscoe Mines, Ltd. (on-shore oil and gas
extraction, gold mining)
Geothermal Kinetics, Inc. (a subsidiary of United
Siscoe Mines)
SeaFirst Corp. (variety of financial services-
mortgage lending, leasing, computers, insurance)
Seattle First National Bank (banking services- a subsidiary
of SeaFirst Corp.)
Lincoln National Corp. (insurance services-life, health,
property, pension)

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Attachment B

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AFS International/Intercultural Programs
American Enterprise Institute for Public Policy Research
American Paper Institute
American Refugee Committee
Bio-Energy Council
Conservation Foundation
Council for Public Interest Law
Council on Foreign Relations, Inc.
Council on Solar Bio Fuels
The Diet
Economic Development Council of Puget Sound
Environmental & Energy Study Institute
Environmental Law Institute
Explorers Club
Handgun Control, Inc.
Harvard University
Harvard/Monsanto Advisory Board
Indiana Academy
INFORM
Monday Club
National Business Council for ERA
National Research Council
National Victims of Crime
Pacific Science Center
Public Agenda Foundation
Resolve (Center for Environmental Conflict Resolution)
Seattle Art Museum
Seattle Chamber of Commerce
Seattle University
Twentieth Century Fund
University of Puget Sound
University of Washington
Urban Institute
U.S. Business Commission on the Reconstruction of Lebanon
Weyerhaeuser Company Archives
Weyerhaeuser Company Foundation

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

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THE ADMINISTRATOR

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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

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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 critical 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 Procedure 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.

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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

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