

**Congress of the United States**  
**Washington, DC 20515**

May 10, 2013

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

Dear Mr. Perciasepe:

The Senate Committee on Environment and Public Works and the House Committee on Oversight and Government Reform are conducting an investigation into inappropriate record keeping practices within the U.S. Environmental Protection Agency. Pursuant to this investigation, we requested records from former Regional Administrator James Martin.<sup>1</sup> The Committees have reviewed e-mails Mr. Martin sent to or from his personal e-mail account relating to official business, and have met with Mr. Martin in conjunction with this investigation. In light of information received from Mr. Martin, we are writing to request additional information from EPA.

The use of a non-official e-mail account to conduct government business raises the prospect that records – as defined by the Presidential Records Act<sup>2</sup> (PRA) and the Federal Records Act<sup>3</sup> (FRA) – were not captured by official government e-mail archiving systems. In addition, the use of a non-official e-mail account to conduct government business creates difficulties in complying with Freedom of Information Act<sup>4</sup> or litigation requests. Furthermore, conducting official business on a non-official e-mail account may implicate additional penalties for removal or destruction of federal records,<sup>5</sup> and the improper handling of records that contain information exempt under FOIA, the Privacy Act,<sup>6</sup> and other information to which access is restricted by law.

---

<sup>1</sup> Letter from Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to James B. Martin, Reg'l Adm'r, U.S. Env'tl. Prot. Agency Region 8 (Jan. 29, 2013); *see also* Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, to Jared Blumenfeld, Reg'l Adm'r, U.S. Env'tl. Prot. Agency Region 9 (Mar. 18, 2013).

<sup>2</sup> *See* 44 U.S.C. § 2201.

<sup>3</sup> *See* 44 U.S.C. § 31.

<sup>4</sup> *See* 5 U.S.C. § 552.

<sup>5</sup> *See* 18 U.S.C. § 2071.

<sup>6</sup> *See* 5 U.S.C. § 552a.

The Honorable Bob Perciasepe

May 10, 2013

Page 2 of 4

EPA has argued that it has a clear and consistent policy framework against the use of nongovernmental e-mail systems for official EPA business,<sup>7</sup> and therefore formal instructions to staff on the use of secondary accounts to conduct Agency business is unnecessary. EPA has suggested that this “policy” is contained in several documents, including briefings given to high level staff when they are hired,<sup>8</sup> e-mail communications reminding employees to not use their private accounts to conduct Agency business,<sup>9</sup> as well as the Agency’s “Frequent Questions about E-Mail and Records” webpage.<sup>10</sup> EPA contends that its “policy” is readily available and well understood by staff; however, we have learned that regional employees are not properly trained or even informed of EPA’s records keeping policies.

When the Committees first questioned Mr. Martin on his use of a personal e-mail account to conduct Agency business,<sup>11</sup> EPA quickly responded with a public denial: “As detailed in public filings, the regional administrator does not use his personal email account to conduct official business.... That Mr. Martin responded to one email sent to a personal email account to confirm a meeting that appears on his official government calendar does not alter that fact.”<sup>12</sup> However, Mr. Martin informed the Committees that he was neither consulted nor notified by EPA headquarters nor anyone else within the Agency before this statement was made to the press. Mr. Martin told the Committees that EPA’s statement was not accurate. According to Mr. Martin, “It was not the [statement] I would have written.”<sup>13</sup>

In addition, Mr. Martin told the Committees that he “wasn’t aware until very recently of the [EPA’s] *strong preference* [to only use work e-mail].”<sup>14</sup> Moreover, he did not know “until very recently”<sup>15</sup> that e-mails in his non-official account could have been considered federal records and was never instructed that these e-mails should be forwarded to his work account in order to preserve them as records.<sup>16</sup>

---

<sup>7</sup> GOV’T ACCOUNTABILITY OFFICE, FEDERAL RECORDS: NATIONAL ARCHIVES AND SELECTED AGENCIES NEED TO STRENGTHEN E-MAIL MANAGEMENT, 61, GAO008-742 app. 3 (June 2008).

<sup>8</sup> *Records and ECMS Briefing, EPA Incoming Political Appointees 2009*, [http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore\\_id=60afa4b3-3e5d-4e6f-b81e-64998f0d3c67](http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=60afa4b3-3e5d-4e6f-b81e-64998f0d3c67) (last accessed May 3, 2013).

<sup>9</sup> *NRMP Alert: Do Not Use Outside Email Systems to Conduct Agency Business*, [http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore\\_id=c3085cfe-781c-4175-b8c2-12d76c2cc88c](http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=c3085cfe-781c-4175-b8c2-12d76c2cc88c) (last accessed May 3, 2013).

<sup>10</sup> ENVTL. PROT. AGENCY, *Frequent Questions about E-Mail and Records* <http://www.epa.gov/records/faqs/email.htm> (last accessed May 3, 2013).

<sup>11</sup> 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, 2013).

<sup>12</sup> CJ Ciaramella, *EPA Official Resigns: Another snared in secret email probe says GOP senator*, THE WASHINGTON FREE BEACON, Feb. 19, 2013, <http://freebeacon.com/epa-official-resigns/>.

<sup>13</sup> Briefing for staff of H. Comm. on Oversight & Gov’t Reform, S. Comm. on Env’t & Pub. Works including James B. Martin, former Adm’r, U.S. Env’tl. Prot. Agency Region 8 (Apr. 22, 2013).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

In fact, the Committees discovered that Mr. Martin regularly used a non-official e-mail account to correspond with individuals and groups outside of EPA regarding Agency business. For example, Mr. Martin regularly communicated with Vickie Patton, General Counsel of the Environmental Defense Fund, about Agency priorities.<sup>17</sup> On multiple occasions, Mr. Martin corresponded with Alan Salazar, Chief Strategy Officer for Governor Hickenlooper,<sup>18</sup> as well as staff of the Colorado Conservation League.<sup>19</sup>

Additionally, Mr. Martin's non-official e-mail account was used for correspondence between Mr. Martin and outside groups with interests in EPA official business. Communications involved, for instance, *New York Times* reporter Andrew Revkin and Tim Wirth, President of the UN Foundation.<sup>20</sup> In one e-mail exchange, Tim Wirth's son-in-law and Harvard professor Samuel Myers states, "cheap gas is just what we don't want b/c it will make it very hard from renewables to compete"<sup>21</sup> [emphasis added]. Revkin goes on to convey he believes the Administration should support a carbon tax.<sup>22</sup> These e-mail exchanges, combined with EPA's apparent ignorance of their occurrence, creates the appearance that special interests have the opportunity to influence our nation's energy and environmental policy in a manner that is off the record and beyond discovery. Accordingly, EPA's failure to develop a comprehensive and effective policy for recordkeeping and e-mail practices has allowed special interest groups to engage in offline conversations about official business with government personnel, while avoiding the transparency requirements of the law.

In light of what the Committees have learned about EPA's failure to inform Region 8 employees of their record keeping obligations, and EPA's false public statement in response to questions about Mr. Martin's e-mail practices, we request that EPA produce all records and communications referring or relating to EPA's public statements about e-mail or recordkeeping practices from January 1, 2009 to the present.

---

<sup>17</sup> E-mail from James Martin, Adm'r, U.S. Env'tl. Prot. Agency Region 8, to Vickie Patton, Env'tl. Defense Fund (Apr. 16, 2012, 10:12:05 AM), [http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore\\_id=8432c575-ed1a-4aab-b614-7e1623096a86](http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=8432c575-ed1a-4aab-b614-7e1623096a86).

<sup>18</sup> E-mail from James Martin, Adm'r, U.S. Env'tl. Prot. Agency Region 8, to Alan Salazar, Chief Strategy Officer for Colo. Gov. Hickenlooper (Aug. 4, 2012, 10:12:14 AM), [http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore\\_id=7e8937bf-d7a7-4f3e-8129-12f319748a0e](http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=7e8937bf-d7a7-4f3e-8129-12f319748a0e).

<sup>19</sup> E-mail from Pete Maysmith, Executive Director, Colorado Conservation Voters, to James Martin, Adm'r, U.S. Env'tl. Prot. Agency Region 8 (Dec. 12, 2012, 12:47:31 PM), [http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore\\_id=d86b4d1f-bf89-4828-aec1-5e24a2e436ac](http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=d86b4d1f-bf89-4828-aec1-5e24a2e436ac).

<sup>20</sup> Bryan Walsh, *Exclusive: How the Sierra Club Took Millions From the Natural Gas Industry – and Why They Stopped*, TIME MAGAZINE, Feb. 2, 2012, <http://science.time.com/2012/02/02/exclusive-how-the-sierra-club-took-millions-from-the-natural-gas-industry-and-why-they-stopped/>.

<sup>21</sup> E-mail from Samuel Myers to Andrew Revkin (Jun. 4, 2012, 06:26 PM), [http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore\\_id=c948d256-13f1-42bc-b66d-92b58c3fe61d](http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=c948d256-13f1-42bc-b66d-92b58c3fe61d).

<sup>22</sup> E-mail from Andrew Revkin to Aubrey McClendon (Jun. 4, 2012, 06:45 PM), [http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore\\_id=c948d256-13f1-42bc-b66d-92b58c3fe61d](http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=c948d256-13f1-42bc-b66d-92b58c3fe61d).

The Honorable Bob Perciasepe

May 10, 2013

Page 4 of 4

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. The U.S. Senate Committee on Environment and Public Works focuses on federal energy and environmental policy and our nation's transportation and infrastructure systems. When producing documents, please deliver production sets to the Committee on Oversight and Government Reform Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. When producing documents to the Environment and Public Works Committee, please deliver production sets to 415 Hart Senate Office Building. The Committees prefer to receive documents in electronic format.

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 and Tyler Grimm with the House Committee on Oversight and Government Reform at (202) 225-5074.

Sincerely,



David Vitter  
Ranking Member  
Senate Committee on  
Environment and Public Works



Darrell E. Issa  
Chairman  
House of Representatives Committee  
on Oversight and Government Reform

cc: Barbara Boxer, Chairman, Committee on Environment and Public Works  
Elijah Cummings, Ranking Member, Committee on Oversight and Government Reform