



The Environmental Law Center
at the American Tradition Institute

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**ATI & CEI Dismiss IM Lawsuit Against EPA;
Agency's Detailed Response Prompts New Inquiries for Records**

Washington – Yesterday, the American Tradition Institute (ATI) and the Competitive Enterprise Institute (CEI) withdrew their lawsuit without prejudice that they jointly filed against the Environmental Protection Agency (EPA), seeking to compel the Agency to respond to the groups' requests for certain Instant Messages (IMs) to or from three senior current and former EPA officials. The groups dropped their suit after EPA provided an atypically specific response, openly acknowledging the availability of this previously unrevealed alternative to email it offers, asserting that no such records for the three officials ever existed, and that none of the three officials had ever used "the U.S. Environmental Protection Agency's instant-message application." This response also directed the parties to new lines of inquiry.

In its request at issue in this suit, ATI sought records relating to the Obama Administration's "war on coal," and its relationship with influential environmentalist groups like the Sierra Club, which like other green pressure groups, is involved in controversial and facially abusive "sue-and-settle" deals with the administration.

"We were forced to bring suit against the EPA because it had completely ignored our FOIA requests for this newly discovered class of communications, which, strangely, have apparently never been produced in response to FOIA and congressional oversight requests for 'records' and 'electronic records'", said Christopher Horner, lead attorney in the EPA FOIA suit, director of Litigation at ATI's Environmental Law Center, senior fellow at CEI, and author of "The Liberal War On Transparency." "We appreciate EPA's uncharacteristically specific 'no records' response, and now look forward to answers to the questions it, and recent congressional testimony by Gina McCarthy, begs."

Ms. McCarthy is President Obama's nominee to replace Lisa Jackson as EPA Administrator. She testified at her recent confirmation hearing in front of the U.S. Senate Environment and Public Works Committee, "Have you ever used EPA instant messaging accounts?" She responded, "One good thing about being 58 is I don't even know how to use them."

Earlier this month, in the wake of widespread publicity regarding the ATI/CEI EPA lawsuit, acting administrator Bob Perciasepe sent a [letter](#) to all EPA staff reminding employees of their need to comply with open record laws. Most significant was his request to the EPA Inspector General to ensure that the agency does a better job of managing its IM record keeping. This represents the first admission that EPA does in fact use IMs to conduct business. (See ATI's 4/9/13 [press release](#) for more details on Perciasepe's letter.)

The parties are now requesting records whose existence is begged by Ms. McCarthy's testimony, specifically seeking those that answer the questions:

- Did any of the three EPA officials, including Ms. McCarthy, sign or receive an acknowledgement or certification of training on the agency's IM system;
- Were any of them ever registered users on EPA's IM systems; and
- Did any of them have EPA's IM system installed on their computers

How the public will learn whether these and other EPA officials indeed used non-EPA instant messaging systems, as EPA's response to ATI and CEI begged, is an open question. It is one made more troubling by an EPA training PowerPoint document that the same groups discovered, and have brought to the attention of Congress, which encourages EPA staff to unlawfully make use of *non-EPA* instant messaging systems, specifically suggesting AOL and Yahoo, which of course would never be subject to federal record-keeping or disclosure laws.

The document also encouraged creating -- and teaching other groups to create -- websites on outside servers, where they "chat," e-mail, and use other technologies whose trail will be difficult to follow with a cooperative agency, and likely impossible with one as committed to stonewalling "unfriendly" FOIA requests as this EPA.

Congressional oversight bodies have since also brought this document to EPA's attention, seeking answers of their own. It, and other information developed by the parties to this lawsuit, have led the U.S. Senate Committee on Environment & Public Works Committee (Minority) to raise serious questions about EPA's record-keeping and disclosure practices ("transparency", and basic compliance with the laws). They have asked EPA five specific transparency requests in the hopes of "restoring public confidence that EPA will stop undermining public trust behind a veil of secrecy." (See the [EPW 4/24/13 blog](#) for more information.)

"The EPA training document clearly illustrates that the agency has been pursuing ways around the law, unlawful means of conducting government business in a way they believed would allow them to work free from scrutiny, and, particularly, continue their collusion with outside interest groups," said Horner.

"Our country is founded on the rule of law, we demand that our government conduct its business in the open as a way to protect all of us," said Craig Richardson, ATI's executive director. "What EPA has done with stonewalling and lying regarding various important FOIA requests, and the fact that they have sought to conduct official business in the shadows, will all be brought to the light, and ultimately EPA will be held responsible."

[American Tradition Institute](#) (ATI) is a public policy research and public interest litigation foundation advocating restoration of science and free-market principles on environmental issues, including air and water quality and regulation, responsible land use, natural resource management, energy development, property rights, and principles of stewardship. All supporting documents and images regarding the above-referenced litigation and findings may be accessed at www.atinstitute.org.