



For Immediate Release – April 9, 2013

Contact: Craig Richardson, Executive Director, American Tradition Institute

craig.r@atinstitute.org

ATI, CEI FOIA Suit for EPA's Instant Messages Leads EPA Head to Acknowledge Poor Record Keeping, Begg Question of Extent of Legal Violations

WASHINGTON - Stung by widespread publicity resulting from recent American Tradition Institute (ATI) and Competitive Enterprise Institute (CEI) Freedom of Information Act (FOIA) lawsuits seeking emails, and most troubling, instant messages (IM's) filed against the Environmental Protection Agency (EPA), acting administrator Bob Perciasepe yesterday reminded EPA employees they are expected to comply with open-record laws. Notably, this all-staff memo promised to do better managing IMs -- an alternative to email that we now know that EPA provides its employees, but which the Agency apparently has never provided to Congress or FOIA requesters.

This indicates the public should expect to hear, as soon as this week's confirmation hearing for Administrator-nominee Gina McCarthy, whether EPA has simply been refusing to search and produce from IM accounts, or destroying the transcripts. As these are clearly federal records this would represent a possible violation of the U.S. criminal code, specifically 18 U.S.C. 2071 (Concealment, removal or mutilation of federal records).

"It is clear from Bob Perciasepe's memo that our IM lawsuit prompted discovery of more EPA violations of record-keeping and disclosure laws. His mention of IMs for the first time publicly indicates EPA is about to reveal whether it has been sloppy, deceitful, or possibly even criminal in its refusals to turn these records over to FOIA requesters and Congress," said Chris 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." "Unfortunately, this hints that EPA will admit it has been destroying communications with and about anti-growth pressure groups with which it has been collaborating to set federal environmental policy. If so, EPA's notorious and expanding 'transparency' troubles are only just beginning."

Last week, ATI and CEI announced their joint filing of a lawsuit in the Federal District Court in Washington, D.C. seeking certain described EPA IMs, to and from former EPA Administrator, Lisa Jackson, nominee McCarthy, and one other former senior official. Responsive records will address the administration's "war on coal", and its relationship with influential environmentalist groups, including one, Sierra Club, involved in high-profile "sue-and-settle" deals with the Obama administration. (See ATI's 4/1/13 [press release](#) for more details on the

suit). The suit resulted in widespread media coverage, and calls from the U.S. Congress for greater transparency from the agency. Both groups are already in court seeking emails meeting similar descriptions.

"That the acting head of the EPA felt compelled to send this warning to his employees about open-record laws -- letting on that EPA has found a problem with previously undisclosed IM correspondence and within days of our lawsuit seeking the same -- clearly signals that EPA is worried about what we have uncovered, and is an admission that their house is not in order," said Craig Richardson, ATI executive director. "What is clear from Perciasepe's letter yesterday is that many of these correspondence were not properly maintained and preserved -- that is, deleted -- and therefore probably lost forever. Given the EPA's track record in recent years, one has to wonder if this was done deliberately," he added.

"We will continue to hold the EPA's feet to the fire with regards to transparency laws, laws that were put in place to stop precisely such secretive and abusive deals to make policy for which EPA is now famous," said Horner. "It is not right for the former EPA Administrator, or any public official, to use any means of communication to circumvent disclosure laws, particularly involving their dealings with close and often improperly influential allies. Sadly, be it IMs, private email accounts or even, in Lisa Jackson's case, a false-identity account, that appears to be epidemic in this EPA," he concluded.

[American Tradition Institute](http://www.atinstitute.org) (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.