

To: Rao, Kate[Rao.kate@epa.gov]
From: Loop, Travis
Sent: Wed 5/20/2015 3:39:24 PM
Subject: RE: NYT article on EPA and waters of the US rulemaking- " was it outreach or was it lobbying?"

Oh yeah. I saw this Monday night when it appeared online.

Travis Loop

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From: Rao, Kate
Sent: Wednesday, May 20, 2015 11:38 AM
To: Loop, Travis
Subject: NYT article on EPA and waters of the US rulemaking- " was it outreach or was it lobbying?"

Travis – did you see this article? You are quoted.

Kate

Critics Hear E.P.A.'s Voice in 'Public Comments'

By ERIC LIPTON and CORAL DAVENPORT MAY 18, 2015

WASHINGTON — When the Environmental Protection Agency proposed a major new rule

intended to protect the nation's drinking water last year, regulators solicited opinions from the public. The purpose of the "public comment" period was to objectively gauge Americans' sentiment before changing a policy that could profoundly affect their lives.

Gina McCarthy, the agency's administrator, told a Senate committee in March that the agency had received more than one million comments, and nearly 90 percent favored the agency's proposal. Ms. McCarthy is expected to cite those comments to justify the final rule, which the agency plans to unveil this week.

But critics say there is a reason for the overwhelming result: The E.P.A. had a hand in manufacturing it.

In a campaign that tests the limits of federal lobbying law, the agency orchestrated a drive to counter political opposition from Republicans and enlist public support in concert with liberal environmental groups and a grass-roots organization aligned with President Obama.

The Obama administration is the first to give the E.P.A. a mandate to create broad public outreach campaigns, using the tactics of elections, in support of federal environmental regulations before they are final.

The E.P.A.'s campaign highlights the tension between exploiting emerging technologies while trying to abide by laws written for another age.

Federal law permits the president and political appointees, like the E.P.A. administrator, to promote government policy, or to support or oppose pending legislation.

But the Justice Department, in a series of legal opinions going back nearly three decades, has told federal agencies that they should not engage in substantial "grass-roots" lobbying, defined as "communications by executive officials directed to members of the public at large, or particular segments of the general public, intended to persuade them in turn to communicate with their elected representatives on some issue of concern to the executive."

Late last year, the E.P.A. sponsored a drive on Facebook and Twitter to promote its proposed clean water rule in conjunction with the Sierra Club. At the same time, Organizing for Action, a grass-roots group with deep ties to Mr. Obama, was also pushing the rule. They urged the public to flood the agency with positive comments to counter opposition from farming and industry groups.

The results were then offered as proof that the proposal was popular.

"We have received over one million comments, and 87.1 percent of those comments we have counted so far — we are only missing 4,000 — are supportive of this rule," Ms. McCarthy told the Senate Environment and Public Works Committee in March. "Let me repeat: 87.1 percent of those one-plus million are supportive of this rule."

But critics said environmental groups had inappropriately influenced the campaign — just as

environmentalists complained that the energy industry improperly drove policy during the George W. Bush administration.

At minimum, the actions of the agency are highly unusual. “The agency is supposed to be more of an honest broker, not a partisan advocate in this process,” said Jeffrey W. Lubbers, a professor of practice in administrative law at the American University Washington College of Law and the author of the book “A Guide to Federal Agency Rulemaking.”

“I have not seen before from a federal agency this stark of an effort to generate endorsements of a proposal during the open comment period,” he said.

Senator James M. Inhofe, Republican of Oklahoma and chairman of the environment committee, is holding a hearing on Tuesday to examine the proposed rule. “There is clear collusion between extreme environmental groups and the Obama administration in both developing and promoting a host of new regulations,” he said.

The most contentious part of the E.P.A.’s campaign was deploying Thunderclap, a social media tool that spread the agency’s message to hundreds of thousands of people — a “virtual flash mob,” in the words of Travis Loop, the head of communications for E.P.A.’s water division.

The architect of the E.P.A.’s new public outreach strategy is Thomas Reynolds, a former Obama campaign aide who was appointed in 2013 as an associate administrator. “We are just borrowing new methods that have proven themselves as being effective,” he said.

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