



## What to Do When Given Questionable Directions: FAQs for EPA Personnel

EPA's website states that "[t]he mission of EPA is to protect human health and the environment." EPA employees have a long history of faithfully and diligently working to fulfill this mission, over many different political administrations. No one should doubt the faithfulness of EPA employees to the mission of the agency.

Because of this strong commitment to the agency's mission, issues and questions sometimes arise when a career employee is asked or ordered to take an action that seems clearly contrary to EPA's mission. Concerns may be based on questions about the legality or scientific validity of the action, or its human or environmental impact. This is not an easy or comfortable position for an employee to find themselves in. It calls for a careful evaluation of the many potential factors that may be involved. The result may be a decision by the employee to elevate the issue or concern to a higher level of management. These FAQs are designed to provide some guidance to help you navigate this process.

### **Q1. I have been directed to do something that I believe may be legally questionable. What options do I have to help resolve my situation?**

A1. EPA employees are entitled to request written legal guidance if there is a legitimate question about the legality of a directive. This approach should not be used if an employee only disagrees with a policy decision, but may be used when there may be a genuine legal issue. An employee should first raise their concerns with their supervisor, perhaps in writing; request the direction or clarification in writing from the supervisor; and perhaps even elevate to second line management. If the employee's concerns remain unresolved at that juncture, they can choose to seek legal guidance. EPA Headquarters employees should send a written request for a legal opinion on the directive to the applicable General Counsel Office (air, water, waste, finance law, employment law, etc). Regional employees should write to the appropriate unit within the Office of Regional Counsel.

Examples of illegal directives may include but are not limited to the following:

- Withholding information from Congress
- Violating Office of Personnel Management regulations
- Ignoring state ARARs, without proper justification, in selecting a Superfund remedy
- Approving a state implementation plan action where there is credible evidence that the NAAQS are not being protected as required by law
- Taking action without required notice and comment or public participation

EPA protects people's health and the environment by using its authority conferred by over 20 different human health and environmental protection laws. EPA must implement those laws as Congress intended, following all required process steps. The Follow the Rules Act of 2017 prohibits taking a personnel action against a federal employee for "refusing to obey an order that would require the individual to violate a law, rule or regulation." If such an action is taken, the employee can appeal that action to the Merit Systems Protection Board.

## **Q2. What if I am directed to do something that raises significant concerns about adverse impacts on human health or the environment?**

A2. EPA employees are encouraged (and, indeed, may feel morally obligated) to identify and elevate public health or environmental risks they perceive may not be receiving the appropriate level of attention or action. Indeed, EPA has for years had a mechanism through which employees can provide agency senior management with notice of a perceived unaddressed significant risk to public health or the environment that is within the scope of EPA's authorities. In addition to the usual communication with co-workers and managers, the employee is encouraged to report the issue using the agency's [web-based tool that notifies senior management](#). If this tool should become unavailable, the employee should send written notification of the perceived unaddressed risk to career and political managers, including the administrator. Employees can also contact the EPA's Office of Inspector General (OIG) hotline at (888) 546-8740 or [OIG.Hotline@epa.gov](mailto:OIG.Hotline@epa.gov).

Examples of directives that could create a significant risk to human health or the environment may include but are not limited to the following:

- Disallowing investigation of potentially significant permit violations
- Ignoring reliable information which indicate exceedances of air quality standards or unacceptable risk levels
- Limiting the cleanup of contaminated areas in a manner that fails to provide an acceptable level of risk reduction
- Allowing destructive dredge and fill activities in a federally-regulated wetland without requiring acceptable mitigation or considering available alternatives
- Failing to take appropriate action (or ensuring that a delegated state takes such action) where a regulated community drinking water system is delivering water with unsafe levels of pollutants.

## **Q3. What if I am directed to do something scientifically questionable?**

A3. EPA employees can send a written request to the Scientific Integrity Officer for an opinion on whether the directive violates the agency's [scientific integrity policy](#). The America Competes Act of 2007 requires the "issuance of an overarching set of principles to ensure the communication and open exchange of scientific data and results...and to prevent the intentional or unintentional suppression or distortion of such research findings." EPA's scientific integrity policy applies to all employees and specifically warns political appointees not to suppress or alter scientific findings. The policy is designed to ensure that decision makers weigh the best available science along with other important factors such as practicality, economics, and societal impact. Employees can also contact the OIG hotline.

Examples of directives violating scientific integrity may include but are not limited to the following:

- Ignoring significant risks in registering pesticides or reviewing new chemicals
- Changing chemical risk assessments or air quality analyses for non-scientific reasons
- Selective consideration of environmental information which biases the outcome of an assessment

- Suppressing the release of scientific studies or evaluations for non-scientific reasons

The public is only protected when government agencies have access, without constraint, to the best available science, and the American people will only trust government action when they are confident regulations and policies are based on a rigorous scientific process that includes quality assurance, independent peer review, and scientific integrity.

**Q4. What happens if I use the mechanisms described in the previous FAQs to raise legitimate concerns and then face personal retaliation?**

A4. It would be naive not to acknowledge the possibility that employees who use these mechanisms to elevate or register their concerns could face some form of retaliation (e.g., being given different job assignments; being transferred organizationally or geographically; being given lower performance evaluations; etc.). The federal Whistleblower Protection Act of 1989 provides some protection for employees; information about those protections can be found [here](#). The act addresses retaliation for reporting issues relating to, among many others, environmental protection, employee safety, discrimination, and fraud and financial issues. Nevertheless, we recognize that legal protections are only effective if the government institutions charged with their administration, including agencies and courts, faithfully carry out their responsibilities. And even if they do, it may take time before employees who are the subject of retaliation are provided the protection to which they are entitled. Employees should be cognizant of these realities when electing to use the elevation and notification mechanisms described in Answers 1 through 3, above.

Please visit EPN's [Helpful Links & Resources](#) page for more information and guidance.