

of the development business." Pilot projects will continue, but they offer less credible proof of efficacy.

Riordan explained that the reason for the cut was that private industry should do this work. But industry's investment record has been poor, for the profits to be reaped on incremental engineering changes are slight. This is why Congress created the program, knowing that as new control technologies become available, it is possible to enforce higher air quality standards.

These are some of the substantial changes in research policy since 1981. Subtler but equally important changes have occurred in relations between the administrators at EPA and the scientists. For example, nothing could alienate the scientific community more effectively than a document leaked to Congress by someone at EPA on 1 March. It was a "hit list" of experts rated according to their willingness to bend to the Administration's views. It appeared to be a survey of industry opinions and may have been used to screen candidates for the Science Advisory Board (SAB) and for consulting jobs (*Science*, 18 March, p. 1303).

This news outraged Robert Sievers, a professor of chemistry at the University of Colorado at Boulder. He was unfavorably reviewed on the list and was dropped this year from the SAB. One of the few who would speak for attribution, Sievers issued a two-page statement of protest. He writes: "Many dedicated, highly competent EPA scientists are liv-



Courtney Riordan

EPA's chief of research

ing in fear of losing their jobs." Academics, he says, are becoming suspicious of the way grants are awarded. "We decry the situation in Russia where scientists of the wrong religion or political leanings become non-persons, unable to obtain support for their research or even for their livelihood. How can we ignore the first ominous indications of a similar trend in our own bureaucracy?" he asks. Although this Administration may consider him too much an activist, Sievers says, he is frequently criticized for being conservative. "I think I'm square in the middle of the road."

EPA officials deny that the hit list was used, but many scientists whose names

appeared on it think otherwise. They point out that when Burford came into office, something new happened. For the first time, all members of the SAB were asked to submit resignations. Most were reappointed, but only for a 1-year term while the advisory structure was being reorganized. Now that the interim year has passed, it appears that most with negative reviews on the hit list were dropped. However, following the bad publicity occasioned by the hit list, EPA is planning to reinstate some of them.

Several SAB members who said they had not noticed a purge say they did notice something else: an unwillingness to make any substantial use of the scientists whom EPA brings to advisory meetings. The common complaint is that the agency seems to use them only for decoration, despite the many promises to take their criticism to heart.

If this record is depressing for environmental activists, it is just as discouraging for President Reagan's constituency. As Lester Lave says, "It's not pro-business; it's just dumb." Thomas Bath, a former executive director of the SAB who describes himself as a conservative Republican, says simply that it has been "a wasted opportunity." He believes, and many academic members of the SAB would agree, that there is ample scientific evidence—had EPA been willing to develop it—to justify a conservative approach to regulation. Instead, EPA's leaders provoked a political storm and "ended up wearing the black hats."

—ELIOT MARSHALL

Congress Investigates Malfeasance at EPA

Allegations of perjury, unethical conduct, conflicts of interest, and political manipulation are swirling about top agency officials

Steven Durham, a regional administrator with the Environmental Protection Agency (EPA), surprised his staff in September 1981, when he decided not to approve some stringent new standards for water quality developed by the state of Colorado. Previously, Durham had indicated that the standards were acceptable. But on the expected date of approval, Durham begged off, seeking more data and some revisions.

Shortly before his decision, Durham chatted on the telephone about the standards with James Sanderson, a consultant and close friend to EPA administrator Anne Gorsuch Burford in Washing-

ton. Sanderson is employed full time by a law firm in Denver, where he represents clients that had filed suit against the state, claiming that the proposed water standards are too tough. Although both men have denied it, Durham's last-minute change of heart has been widely attributed to the call from Sanderson, who was allegedly using a position of authority in Washington to benefit his private clients, thereby enriching himself.

This sequence of events and many others like it have led to intense congressional scrutiny of EPA in recent months. The resulting allegations of wrongdoing, unethical behavior, and potential crimi-

nal conduct combined to generate the pressures that culminated in Burford's resignation on 9 March. Although the scandal appears to embrace more employees and more events each week, there is a central argument in all the criticisms—namely, that Burford and most of her appointees either lacked or somehow quickly lost the ability to distinguish public interest from private gain.

Five congressional subcommittees are examining whether and to what extent EPA officials or their friends prospered illicitly during Burford's tenure. No one has yet been formally charged with a

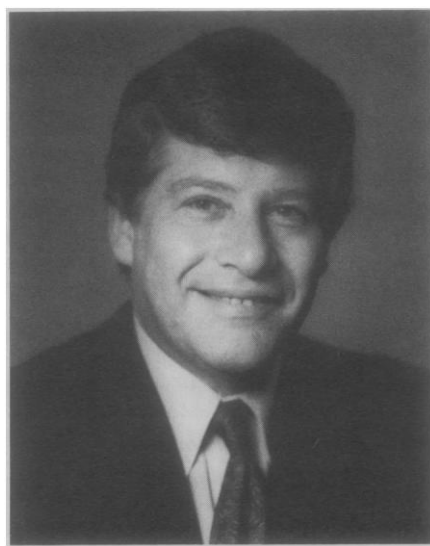
crime. But the actions of several appointees are under investigation by the Justice Department, including those of Sanderson and of Rita Lavelle, the former assistant administrator for solid waste. In addition, Representative John Dingell (D-Mich.), chairman of the House Committee on Energy and Commerce, has recommended a perjury investigation of Robert Perry, the agency's top attorney. Two other officials have been questioned about the use of EPA property and employees for unofficial business. One was the agency's associate administrator for administration, John Horton, and the other was the inspector general, Matthew Novick. Both were dismissed by Burford a few weeks before her resignation.

Sanderson figures prominently in several ongoing inquiries, and his activities are regarded by many on Capitol Hill as illustrative of the agency's current difficulties. His employment as an EPA consultant dates from Reagan's appointment of Burford as EPA administrator. Previously, Sanderson had served as a regional counsel for EPA. But then he went into private practice, representing a series of clients with an interest in the regulation of environmental pollutants. According to a list that he supplied to the agency in October 1981, these included several oil firms, a few resorts, some companies involved in hazardous waste disposal, and roughly 20 municipal water agencies from Colorado. Most important, perhaps, he had represented the Adolf Coors Company, whose owner is said to have sponsored Burford's nomination.

Many top EPA appointees including Perry and Lavelle first encountered Sanderson during their job interviews, when he sat beside Burford, demonstrating to everyone that he had her ear. Officially, Sanderson was an "intermittent expert," employed at \$193 a day. The ethics law for such an employee is pegged to the duration of government service. Within the first 60 days, a consultant is prohibited from working on the same matter for both agency and client; afterward, a consultant is prohibited from representing clients on any matters under agency consideration. A ruling from EPA's ethics office said that "since any representation by you of outsiders before EPA would create the appearance of conflict of interest . . . you should avoid such representation even before the statutory 60 day period had passed."

The rule notwithstanding, Sanderson freely represented private firms at EPA in July, August, September, and October 1981, according to his law firm billing

records, which were subpoenaed early last year. On 21 September, for example, Sanderson billed the Denver Board of Water Commissioners, a municipal utility, for 1.7 hours of work on an "EPA review in Washington." This was the day that Steve Durham apparently reversed his position on the Colorado water standards. The Denver Water Board is one of several plaintiffs that have challenged the standards in court, with Sanderson as their attorney. As Sanderson explains, the Board views the standards as an impediment to its development of new water projects. Other clients, including Adolf Coors, object to portions of the standards that would require the construction of costly water treatment facilities.



Matthew Novick, Inspector general

Released two reports on Sanderson—one public, one secret.

Sanderson admits discussing the standards with Durham, Perry, and William Pederson, another EPA attorney, but he denies any attempt to influence the agency's decision. All three claim that the conversations were solely to gather information. "What Sanderson and I talked about was . . . for example, if EPA just sat on the submission could anyone get relief from that," Pederson has testified. Pederson never asked whether Sanderson was calling as a private citizen or an EPA official. "Sanderson is obviously an intimate of Mrs. Gorsuch and of Durham and it isn't unusual for people like that to have a kitchen cabinet that they consult on matters," Pederson says.

Durham insists that it was he who placed the call to Sanderson and not the reverse. "I contacted Mr. Sanderson . . . to ask his opinion on what options I had available under the statutes," Durham has testified. "I don't know

where I got his name—whether from my staff or from some people in private industry that I talked to." Three staff people in Durham's office say that he told them the policy reversal was due to instructions from headquarters, that he had been "overruled," or that the matter was now out of his hands. Durham denies making such a statement to any of the three.

Sanderson says that in any event, "I had no restrictions on my activities as a private attorney even if the allegations were true which they're not." The reason, he says, is that the whole affair occurred during a period when he was between EPA consulting assignments, and before he had served for 60 days. Some of his EPA work was free, he says, and that does not count against the total. Sanderson calls his work "PBG" for "pro bono Gorsuch," and in testimony compared it to pro bono work that his firm performed for the YMCA and indigent patrons of a legal clinic. In a similar vein, Sanderson's attorney, Paul Cooper, is unconcerned by allegations that his client used an EPA chauffeur-driven auto and EPA secretaries to conduct his private business during this period. "The use of a vehicle or staff in the limited context here involved, in order to make more efficient use of the employee's available time, is clearly in the public interest," Cooper sincerely claims.

It is in any event difficult to verify Sanderson's tale, because he failed to keep a complete record of his time at EPA, and because no one at the agency formally monitored his comings and goings. Papers marking the end of one consultancy and the beginning of another were not filled out until months later. Sanderson acknowledged in February 1982 that he was paid for 5 days in which he performed no agency work.

The Colorado water dispute is not the only topic on which Sanderson's public and private interests commingled. Prior to his appointment in Washington, Sanderson worked on behalf of the Colorado Water Congress, "a group of users interested in water availability and development," as he told the agency in a financial disclosure form. Separately, he represented the Chevron Shale Oil Company, Western Crude Oil, Sunoco Energy Development, and a host of other firms whose interests are vitally affected by water regulation. Yet, during a period of several months, Sanderson regularly participated in interagency deliberations on the national Clean Water Act, which is due for congressional reauthorization this year. Attendance at these meetings included John Hernandez, now the act-

ing EPA administrator; John Daniels, the agency's chief of staff; Perry; and Bruce Barrett, then the acting administrator for water. Apparently no one thought to ask if anyone might have a conflict of interest. In March 1982, Perry—who is ultimately responsible for enforcing the agency's ethics regulations—told investigators that he knew Sanderson was with a law firm "but I'm not aware of their business or what they do." Last October, the agency published amendments to the act that would generally relax pollution controls and cede substantial authority to the states.

Similarly, Sanderson actively participated in interagency discussions of new solid waste regulations, including several at which Burford herself was present. According to sworn testimony by Rita Lavelle, he also took part in deliberations on a suspension of liquid waste disposal regulations. Sanderson's clients include Chemical Waste Management, Inc., which was able to dispose of a large quantity of liquid waste while the suspension was in effect. Gary Dietrich, a former director of EPA's Office of Solid Waste, says that he was present when Sanderson expressed his opinions about the solid waste regulations, and that Sanderson had phoned him twice in late 1981, seeking the date that the suspension would take effect. Dietrich says he does not know what hat Sanderson was wearing. In testimony, Sanderson has said that his only role was to inform various agency officials that he had a private client in that area and thus could not become involved. "If the specifics of the liquid waste regulations had come up, Jim would have left the room," his lawyer says.

Still, Representative Michael Synar (D-Okla.), chairman of a House subcommittee on energy and the environment, wrote to the Federal Bureau of Investigation on 24 February, seeking "a full investigation of involvement and potential criminal liability" of Sanderson, Burford, and Perry for participating in these meetings. Perry has also drawn congressional fire for his participation in discussions leading to an agreement for cleanup of a waste dump in Indiana. One of the contributors to the dump, and parties to the agreement, is the Exxon Corporation. Perry is a former trial attorney for Exxon. At a recent hearing on Capitol Hill, he acknowledged that "I should have recused myself."

Similarly, Rita Lavelle has been criticized for not walking out soon enough on EPA discussions of cleanup at a dump in California, to which her former employer, the Aerojet Corporation, contributed

some toxic wastes. Lavelle gave sworn testimony that she officially recused herself immediately after learning of the potential conflict in June. Subsequently, a House subcommittee received sworn testimony from three EPA employees who said that Lavelle knew of Aerojet's involvement in May, not June. Representative Dingell has asked for FBI scrutiny of Lavelle on a possible perjury charge. Perry is being investigated because he certified that what Lavelle said was true, with apparent knowledge that it might not be. Perry has in turn submitted evidence to the Justice Department



Robert Perry, general counsel

"I should have recused myself."

of manipulation of the waste dump cleanup agreements in order to punish or favor various political candidates. Lavelle has testified that Burford was directly responsible for such manipulations.

One reason that these shenanigans were slow to attract attention at the EPA is that the Reagan Administration does not look askance at close ties between federal regulators and the private groups that they regulate. John Todhunter, EPA's assistant administrator for toxic substances, saw nothing irregular about meeting over dinner with representatives of the formaldehyde industry, shortly before he decided not to regulate formaldehyde as a human carcinogen in 1982. Burford herself had socialized routinely with representatives of corporate trade associations from her swearing in to her resignation. Her calendar for 1982 indicates that she attended nearly 40 receptions and dinners paid for by such groups as the Chemical Manufacturers Association, the U.S. Chamber of Commerce, the National Association of Manufacturers, the American Petroleum Institute, the Edison Electric Institute, the Mining

and Reclamation Council of America, the Tanner's Council of America, and the American Textile Manufacturing Institute. She lunched three times with John Quarles, the Washington lobbyist for companies seeking relaxation of the Clean Air Act. She met with a representative of Dow Chemical Company to learn about international toxics regulation, shortly before traveling to a meeting on the topic in Paris. In September 1982, when the agency was under attack in Congress, Burford and Rita Lavelle attended a reception and dinner given by Aerojet's top executives, according to the calendar. Such meetings are not illegal. But their frequency stands in sharp contrast to only two brief meetings that Burford held with environmentalists in 1982.

The agency's reputation has not been helped by the recent revelation of an attempt to obscure its ties to certain private interests. Inspector General Novick published a report on Sanderson in April 1982, in which he said that the investigation disclosed no evidence that Sanderson represented clients who had matters pending before EPA or that he involved himself in these matters as an EPA official. Displaying a striking contempt for Congress, he sent a separate report to Burford that contained far more candid and damaging conclusions. "There are numerous areas of interest . . . that could prove troublesome or embarrassing to the Agency should someone choose to make them an issue," he said. Included were the details of Sanderson's sloppy record-keeping, the fact that Sanderson frequently worked for private clients on days he was employed at EPA, the fact that testimony of various witnesses conflicted, and the fact that Sanderson used EPA's legal office to obtain advice on a Colorado legislative proposal of interest to his clients. Although Sanderson removed himself from consideration for the agency's third highest position last June, Burford took no action of her own. In recent months, he continued to enjoy access to the agency's high-level staff on private matters.

Missing from Novick's private report to Burford was a statement from Sanderson that inadvertently said a lot about his attitude and the agency's troubles. The outcry over his behavior is due to cynicism, he told Novick's investigators. "You know how you read in the paper about how supposedly the Reagan Administration has a hidden agenda to dismantle the agency and all that, which is false of course. That kind of feeling feeds upon itself."—**R. JEFFREY SMITH**