

Steve Page/RTP/USEPA/US
06/14/2010 02:11 PM

To Janet McCabe
cc
bcc
Subject NSPS Refinery reconsideration

Heads up. I know you have been involved in this issue.

We are participating on a call with Sierra Club today at 5:30. We will (b) (5) DP



I expect that they will not be happy with the proposed date since they asked that we propose in November of this year. I'll let you know how it goes.

Janet McCabe/DC/USEPA/US To
Sent by: Addie Johnson cc
12/13/2010 08:02 AM bcc
Subject GHG discussion

Meeting

Date 12/13/2010
Time 10:00:00 AM to 11:00:00 AM
Chair Janet McCabe
Invitees
Required Al Armendariz
Optional
FYI
Location

Lots of back and forth on this. Here is the final schedule and travel information.

When: 10:00 - 12:30 CST Monday, 12/13

Where:

Environmental Defense Fund
44 East Avenue, Suite 304
Austin, Texas 78701
512-478-5161

Agenda Shared with Organizations :

10:00 - 11:00: GHG discussion with Janet McCabe, OAR
11:00 - 11:30: Update and discussion on "de-flex process"
11:30 - 12:30: TCEQ Air Permitting Programs

There was some discussion about meeting with other entities later that day as a group. Instead, Al will be doing some solo intergovernmental meetings in the afternoon.

Call-in information: EDF is going to set up video conferencing, but they need some kind of technical info from us to set up the calls. Please send me the name and number for whomever EDF should call to coordinate the video call.

Participant Organizations: EDF, Public Citizen, EIP, Sierra Club, Air Alliance Houston, UT Environmental Law Clinic

I may receive some additional input from the organizations about specific agenda topics. If so, I'll forward it along to the group.

Please call me if you have any lingering questions.

Layla

Al Armendariz Hi Team, Hey Adam, There is interest in the e... 11/23/2010 07:41:53 PM

From: Al Armendariz/R6/USEPA/US
To: Lawrence Starfield/R6/USEPA/US@EPA, Carl Edlund/R6/USEPA/US@EPA, John Blevins/R6/USEPA/US@EPA, Suzanne Murray/R6/USEPA/US@EPA, David Gray/R6/USEPA/US@EPA, Layla Mansuri/R6/USEPA/US@EPA, Adam Kushner/DC/USEPA/US@EPA

Date: 11/23/2010 07:41 PM
Subject: trip to Austin

Hi Team, Hey Adam,

There is interest in the enviro community in having us come down to Austin to talk about Texas air issues.

The enviros have a bunch of questions and suggestions about our Texas air permitting reform work, the new work to do GHG permitting in Texas, what is going to happen after January 2011, startup/shutdown emissions, and other issues.

I have checked my calendar and I can make the following dates in December work for me: Dec 2, 3, 6, 7 (afternoon), 13, 14, 15, 16 (afternoon), 17.

After the 15th, I believe that Larry is on travel, although I think we can manage without his good services if we need to on the 16th or 17th.

Janet has agreed to call-in and will be talking about the national GHG strategy.

Could you check your calendars and let Layla know which days work or don't. If none do, please check with your deputies or a branch chief.

(and Adam, I

[REDACTED]. I'm sure they'd like to see you as well if you could make it. Kelly has a lot of complaining to do about MSS emissions.)

The meeting would probably be 2-3 hours, which would give you time to conduct other business in Austin (with your TCEQ counterparts for example) if you wish.

Best to all.

Al

Al Armendariz
Regional Administrator
Environmental Protection Agency
Region 6
Dallas, Texas
armendariz.al@epa.gov
office: 214-665-2100

Adora Andy/DC/USEPA/US
06/29/2009 04:18 PM

To: Gina McCarthy
cc: Betsaida Alcantara
bcc:
Subject: DECISION: desert rock filing

Hey Gina,
Is there anyone in your shop who can [REDACTED]

Thanks so much,
Adora

Adora Andy
Press Secretary
U.S. Environmental Protection Agency
Office of Public Affairs
202-564-2715
andy.adora@epa.gov

----- Forwarded by Adora Andy/DC/USEPA/US on 06/29/2009 04:17 PM -----

From: Lisa Heinzerling/DC/USEPA/US
To: Adora Andy/DC/USEPA/US@EPA, "Allyn Brooks-LaSure" <brooks-lasure.allyn@epa.gov>
Date: 06/29/2009 04:13 PM
Subject: Re: DECISION: desert rock filing

[REDACTED]
Adora Andy

----- Original Message -----

From: Adora Andy
Sent: 06/29/2009 03:18 PM EDT
To: Lisa Heinzerling; "Allyn Brooks-LaSure" <brooks-lasure.allyn@epa.gov>
Subject: DECISION: desert rock filing

[REDACTED]
Cathy Milbourn

----- Original Message -----

From: Cathy Milbourn
Sent: 06/29/2009 03:11 PM EDT
To: Adora Andy
Cc: Roxanne Smith; Brendan Gilfillan
Subject: DECISION: desert rock filing

Hi Adora--
[REDACTED]

Brian Doster

Fett
Subject: Fw: desert rock filing

John,

Just realized I have not yet given you a heads up about another filing today in the Desert Rock PSD permit dispute before the EAB. We're responding this afternoon to several of the charges described in this article below from the EAB. Copied further below is a message from Dawn Reeves asking for our filing today. My preference is [REDACTED]. I will provide you with a copy of the final document once its done if that works for you.

For background here is a copy of the draft response as it stands right now so you can see what we plan to say. This draft should not be released, since its not final yet. I've got to focus on finishing up the filing right now, but if I get the chance, I'll suggest some talking points based on the text of the filing.

[attachment "EPA Region 9 reply to remand oppositions 06 29 09 am.doc" deleted by Lisa Heinzerling/DC/USEPA/US]

Industry Attacks EPA, Activist Meetings Over Key Utility Air Permit

Industry is raising major legal concerns after the Obama EPA met with activists opposed to new coal plants shortly before reversing course in a long-running Environmental Appeals Board (EAB) case, switching from defending the air permit the agency's Region IX issued last year for a proposed New Mexico power plant to seeking a voluntary remand of the permit to reconsider four key issues.

Lawyers for the Desert Rock facility filed [a June 11 brief](#) in the EAB case highlighting a March 2 meeting between senior EPA policy counsel Robert Sussman and the Sierra Club, and note the following month the Obama EPA Region IX dropped the Bush EPA's defense of the Desert Rock prevention of significant deterioration (PSD) permit and instead sought remand.

Industry also criticizes EPA's April 24 decision to grant activists' petition for reconsideration of the Bush fine particulate matter (PM2.5) surrogate rule. The rule, used to justify portions of the Desert Rock permit, also stayed a grandfathering provision that applies to Desert Rock, according to the industry brief.

“[T]his sequence of events raises serious concerns about the integrity of EPA Region IX's actions in this case,” the brief says. Two of the groups challenging the permit had a closed-door meeting with EPA political appointees and at least one staff attorney, during which the challengers laid out their litigation strategy for projects such as Desert Rock, discussed the proposed New Mexico plant's permit, and “specifically requested that EPA revoke an established EPA rule related to the defense of the Desert Rock PSD permit,” the brief says.

At issue is industry's opposition to EPA Region IX's April 27 request to the EAB to allow the agency to voluntarily remand the final PSD permit to review issues that could have broad implications on agency policy, including consideration of integrated gasification combined cycle technology to capture carbon dioxide in best available control technology

reviews, the use of coarse particulate matter as a surrogate for measuring PM2.5, the issuance of a final permit before completing Endangered Species Act consultation and the sufficiency of the additional impacts analysis for the proposed facility.

In the request, EPA said a complete remand “will promote efficiency in the agency’s decisionmaking and potentially enable Region IX to resolve several disputed issues.”

But industry’s brief says no other parties in the EAB case, *In re: Desert Rock Energy Company*, were informed of the meetings between EPA and activists in the run-up to the agency’s remand request, and seeks to identify the meetings as an improper impetus for the agency’s change in position on the permit.

The brief says EPA’s “unprecedented” motion for a voluntary remand “is the culmination of a strategic end-run around this board’s authority and the law that applies to Desert Rock Energy *today*, as opposed to the law that might apply to Desert Rock Energy if it were forced to begin the PSD permitting process again.”

Further, industry argues that if EAB grants the remand, that “would have severe collateral reverberations throughout the regulated community, slowing the already-glacial pace of development and shaking the trust of participants in every stage of all sorts of permit proceedings” because the remand motion “is based on the expectation of future changes in EPA rules or policies that might, in the region’s view, affect the validity of the Desert Rock permit that has already been issued. This is a remarkable proposition.”

Finally, it calls the agency’s remand request “a naked attempt to stall previously-permitted projects so that no new coal-fired power plants are approved before EPA can overhaul the PSD permitting program to align it with the new Obama administration’s policy goals.”

However, environmentalists in a [June 11 filing](#) broadly support EPA’s request and seek to downplay industry’s concerns. “Until the board has made a final determination on a permit appeal, it has broad discretion within the administrative review process to remand permits, allow the region to withdraw all or part of a permit, or to refer permit appeals to the administrator. Nothing in either the Clean Air Act or EPA’s implementing regulations compel the EAB to itself resolve all contested issues in a PSD permit appeal once review has been granted.”

Additionally, they say, “EPA has detailed sound reasons for its request for remand of the permit, including changes in EPA regulations, changes in policy and new technical information.”

Activists also asked EAB June 15 [for additional time](#) to respond to some of the issues raised by the Desert Rock filing as well as a new *amicus* in the case, [the American Coalition for Clean Coal Electricity](#), which EAB last month gave permission to join the case to oppose EPA’s remand request.

On June 16, EAB [granted environmentalists’ request](#), giving the groups until June 29 to

respond to industry's arguments.

In addition, EPA in a [June 19 request](#) to EAB asks the board to allow it the opportunity to rebut some of Desert Rock Energy Company (DREC) "inaccurate and misleading statements. . . . In particular, DREC has charged in its response that Region IX has exhibited bad faith by requesting a voluntary remand on the basis of (1) a change in regulatory requirements that is prospective in nature and not presently effective; (2) a willful misrepresentation of the administrative record in this matter; (3) grounds that are frivolous and serve only as pretext for other purposes; and (4) improper communications between the petitioners and EPA officials (including the undersigned counsel). Region IX disputes these assertions and requests an opportunity to demonstrate that these charges are erroneous."

Meanwhile, EPA appears to be rejecting a flurry of industry lobbying asking the agency to drop its bid for the voluntary remand of the Desert Rock permit. Proponents of the plant have been meeting in recent weeks with top agency officials, including EPA Administrator Lisa Jackson and Region IX Acting Administrator Laura Yoshii, apparently to urge the agency to back away from the remand.

For example, Navajo Nation President Joe Shirley -- who supports the project, to be built on Navajo land, and sees it as a key economic driver for the tribal nation -- met with Jackson June 12. Shirley called the meeting "helpful" but said the focus of the meeting was on the plant's potential as a carbon sequestration test project, rather than on EPA changing its mind, one source says.

Additionally, Desert Rock proponents held a face-to-face meeting with Yoshii earlier this month in what appears to be another bid to convince the agency to back away from the remand, one environmentalist says. A Desert Rock source declined to confirm the nature of the meeting.

But the activist says Desert Rock developers want to "pull political strings" to convince EPA to back away from the remand request. The source says, "I find it somewhat ironic that they're now running behind the scenes to try to change the game at the 11th-hour" while they are complaining about alleged improper communications between EPA and environmentalists. -- *Dawn Reeves*

----- Forwarded by Brian Doster/DC/USEPA/US on 06/29/2009 12:14 PM -----

From: dawn reeves <dawn.reeves@iwpnews.com>
To: Brian Doster/DC/USEPA/US@EPA
Date: 06/29/2009 12:05 PM
Subject: desert rock filing

Hello Brian,

This is Dawn Reeves at Inside EPA requesting that you forward me your Desert Rock filing once it's filed today with EAB as it sometimes takes EAB a bit to post on the site.

Thanks much,

Dawn
703-562-8766

Alex Barron/DC/USEPA/US
04/04/2011 01:39 PM

To Joseph Goffman, Rob Brenner, Lorie Schmidt
cc
bcc
Subject Fw: Clean Air Act's general duty clause in section 112 (r) (1)
w.r.t. chem security

Air folks - [REDACTED]
[REDACTED] Can you please direct me to someone in air that could help with this? The meeting is
Thursday AM.

A
----- Forwarded by Alex Barron/DC/USEPA/US on 04/04/2011 01:38 PM -----

From: Alex Barron/DC/USEPA/US
To: Joseph Goffman/DC/USEPA/US@EPA
Date: 03/29/2011 02:53 PM
Subject: Clean Air Act's general duty clause in section 112 (r) (1) w.r.t. chem security

[REDACTED]
Thanks,
Alex

----- Forwarded by Alex Barron/DC/USEPA/US on 03/29/2011 02:51 PM -----

>> From: Rick Hind <rick.hind@greenpeace.org>
>> To: Heidi Ellis/DC/USEPA/US@EPA
>> Date: 03/22/2011 12:54 PM
>> Subject: MTG. REQ ON CHEMICAL DISASTER PREVENTION
>>
>> Dear Heidi,
>>
>> **On behalf of our blue-green coalition we would like to request a
> meeting
>> with Administrator Jackson about a regulator proposal we have made to
>> Office of Air and Water leaders including Gina McCarthy, Debbie
>> Dietrich, Dana Tulis, Cynthia Dougherty as well as Deputy
> Administrator
>> Bob Perciasepe.**
>>
>> To the credit of the EPA and Department of Homeland Security, the
> Obama
>> administration has consistently taken urged Congress to require the
> use
>> safer chemical processes at high risk chemical plants:
>>
>
>> [http://homeland.house.gov/sites/homeland.house.gov/files/Testimony%20Beers_1.p
df](http://homeland.house.gov/sites/homeland.house.gov/files/Testimony%20Beers_1.pdf)
>>
>> http://www.dhs.gov/files/programs/gc_1176736485793.shtm
>>
> http://www.epa.gov/ocir/hearings/testimony/111_2009_2010/2010_0303_pss.pdf

>
>>
>>
>> After passing H.R. 2868 in the House in 2009, chemical security and
>> disaster prevention legislation died in the Senate in 2010. The
>> prospects for truly protective legislation look no better this year.
>> More than 100 groups support this legislation including the AFL-CIO,
>> United Auto Workers, United Steel Workers, Communications Workers of
>> America, Teamsters, Sierra Club, Environmental Defense Fund,
> Physicians
>> for Social Responsibility, U.S. Public Interest Research Group, Clean
>> Water Action, OMB Watch, League of Conservation Voters, etc.
>>
>> **As result our blue-green coalition would like to meet with**
> **Administrator**
>> **Jackson and other EPA leaders to discuss regulatory options with you**
> **and**
>> **any other relevant Agency staff you recommend. For example, we would**
>> **like to explore the use of the Clean Air Act's general duty clause in**
>> **section 112 (r) (1). As you may know, this authority was cited by the**
>> **EPA in their 2002 proposal led by former Deputy Administrator Linda**
>> **Fisher (now**
>> **VP at DuPont).**
>>
>> We think the current EPA could improve on the 2002 proposal but what's
>> most promising is the priority given to hazard reduction such as:
>> "Making chemical processes inherently safer by reducing quantities of
>> hazardous chemicals handled or stored, substituting less hazardous
>> chemicals for extremely ones or otherwise modifying the design of a
>> process to reduce or eliminate chemical hazards."
>>
>> For more details on this proposal I've attached documents from the
> EPA's
>> 2002 proposal which include:
>> -- EPA's roll out plan at the White House
>> -- EPA proposed guidance referencing the general duty clause &
>> inherently safer technologies
>> -- EPA Q&A on the program
>> -- Draft Announcement by Administrator Whitman
>> -- A slide presentation given by Deputy Administrator Linda Fisher
>>
>> Below are a few sobering examples of why such preventive action is so
>> urgently needed:
>>
>> On February 24thH ABC News reported on the the hazards posed by U.S.
>> refineries:
>>
>
<http://abcnews.go.com/Blotter/hydrofluoric-acid-risk-oil-refineries/story?id=12985686&page=1>
>
>>
>>
>> The November 15, 2010 Washington Post, reported that the Lashkar
>> terrorist organization that committed the 2008 attacks in in Mumbai,
>> India, asked a now convicted U.S. ally to "conduct surveillance of an
>> unnamed chemical plant in MARYLAND." The request shows that Lashkar
> was
>> gathering intelligence on U.S. targets as early as 2001.

>>
> <http://tpmlivewire.talkingpointsmemo.com/2010/11/the-man-behind-mumbai.php>
>
>>
>>
>> On November 9, 2010, "A man crashed his sport-utility vehicle through
> an
>> entrance gate at a plant in Clute and sped through the facility while
>> shouting, 'We're' all gonna die!' before the SUV slammed into an
>> 18-wheeler outside the gate."
>> <http://www.chron.com/disp/story.1/bizarre/7287659.html>
>>
>> A November 9, 2010 explosion occurred at a NY duPont killed one
> worker:
>>
>
<http://www.jems.com/article/news/fatal-explosion-ny-chemical-plhttp://www.wben.com/One-Dead--One-Injured-In-Explosion-at-DuPont-Tonaw/8537114>
>
>>
>>
>
<http://www.washingtonexaminer.com/nation/chemical-tank-explodes-at-western-new-york-dupont-plant-killing-1-injuring-1-106974728.html>
>
>>
>>
>> On October 13, 2010, Homeland Security staff that over see chemical
>> security said, "the U.S. intelligence community has changed its
> estimate
>> of that threat. . . .We are in a new threat environment
> domestically..."
>>
>
<http://secprodonline.com/articles/2010/10/13/dhs-official-cfats.aspx?admgarea=News>
>
>>
>>
>> On August 2, 2010, two men were convicted of plotting to blow up
>> jet-fuel tanks at John F. Kennedy International Airport, a plan
>> authorities said was meant to outdo the Sept. 11, 2001, attacks.
>>
>
<http://www.washingtontimes.com/news/2010/aug/2/ny-jury-convicts-2-jfk-airport-tank-blast-plot/?page=1>
>
>>
>>
>> And the following are a few of reasons why such an initiative would
> also
>> be popular:
>>
>> SAFER CHEMICAL PROCESSES MEAN MORE JOBS
>> An independent economic analysis by Management Information Services,
>> Inc. (MISI) showed that the House-passed chemical security bill (H.R.
>> 2868) would actually have created 8,000 jobs and leveraged nearly \$2
>> billion in economic stimulus. The two sectors of the economy that will
>> benefit the most include publicly-owned water treatment plants. For a
>> copy of the report & supporting documents go to:

>> <http://www.misi-net.com/publications.html>
>>
>> HUNDREDS OF PLANTS HAVE CONVERTED & SAVED MONEY
>> Even though the Congressional Research Service identified 484 plants
>> that each put 100,000 or more people at risk, others have converted
> and
>> and often yielded savings. Unfortunately at the current pace voluntary
>> conversion will take decades and there is no priority given to the
>> highest risk facilities. List of converted plants at:
>>
>
http://www.americanprogress.org/issues/2010/03/chemical_security_factsheet.htm
1
>
>>
>>
>> CLOROX IS CONVERTING ALL OF ITS U.S. PLANTS
>> In November 2009, The Clorox Company announced plans to convert all of
>> their U.S. facilities from ultra-hazardous chlorine gas to liquid
> bleach
>> to "strengthen our operations and add another layer of security,"
>> according to their CEO Don Knauss. Clorox also indicated that these
>> changes "won't affect the size of the company's workforce."
>>
>> <http://investors.thecloroxcompany.com/releasedetail.cfm?ReleaseID=420583>
>>
>> DOW CHEMICAL IS CONVERTING ITS NORTHERN CA PLANT
>> In December 2008, Dow Chemical announced a partnership with K2 Pure
>> Solutions that will eliminate the chlorine gas risks at their
>> Pittsburgh, CA plant and create 40 permanent jobs and approximately
> 300
>> construction jobs. www.k2pure.com
>>
>> THE RAIL ROADS SUPPORT A REQUIREMENT FOR HIGH RISK PLANTS TO CONVERT
>> The Association of American Railroads has also called for disaster
>> prevention saying, "It's time for the big chemical companies to do
> their
>> part to help protect America. They should stop manufacturing dangerous
>> chemicals when safer substitutes are available. And if they won't do
>> it, Congress should do it for them..."
>>
>
<http://www.aar.org/KeyIssues/~media/aar/backgroundpapers/hazmattransportationbyrailanunfairliability.ashx>
>
>>
>>
>> Thank you. We look forward to meeting at your earliest convenience.
>>
>> Sincerely,
>>
>> Rick
>> --
>> Rick Hind
>> Legislative Director, Greenpeace
>> 702 H Street, NW #300
>> Washington, DC 20001
>> (202) 319-2445 (direct)
>> (202) 413-8513 (cell)
>> (202) 462-1177 (switch board)

>> [REDACTED]
>> rick.hind@wdc.greenpeace.org
>> www.greenpeaceusa.org
>>
>> (See attached file: EPACChemSecurityRolloutJune02.pdf) (See attached
> file:
>> EPA 2002 Chem Sec Slide Proposal.pdf)
>
> --
> Rick Hind
> Legislative Director, Greenpeace
> 702 H Street, NW #300
> Washington, DC 20001
> (202) 319-2445 (direct)
> (202) 413-8513 (cell)
> (202) 462-1177 (switch board)
> (202) 462-4507 (fax)
> rick.hind@wdc.greenpeace.org
> www.greenpeaceusa.org
>
>

--
Rick Hind
Legislative Director, Greenpeace
702 H Street, NW #300
Washington, DC 20001
(202) 319-2445 (direct)
(202) 413-8513 (cell)
(202) 462-1177 (switch board)
(202) 462-4507 (fax)
rick.hind@wdc.greenpeace.org
www.greenpeaceusa.org

Emily
Atkinson/DC/USEPA/US
10/11/2012 10:11 AM

To Janet McCabe
cc
bcc
Subject Mtg Request: Environmental Justice Stakeholders w/ Gina
McCarthy

Janet -

Cindy is following up on this meeting request and would like to know if it is something you would like to schedule while Gina is in Indonesia or if it should wait until she return.

Emily

----- Forwarded by Emily Atkinson/DC/USEPA/US on 10/11/2012 10:07 AM -----

From: Cindy Huang/DC/USEPA/US
To: Emily Atkinson/DC/USEPA/US@EPA
Date: 10/11/2012 10:05 AM
Subject: Fw: Meeting Request for Environmental Justice Stakeholders w/ Gina McCarthy

Hi Emily,

This is the Earthjustice email - they couldn't do this week with the other enviros because of a staff retreat, so they'd like to keep the dates that Gina's in Indonesia.

----- Forwarded by Cindy Huang/DC/USEPA/US on 10/10/2012 02:00 PM -----

From: Stephanie Maddin <smaddin@earthjustice.org>
To: Cindy Huang/DC/USEPA/US@EPA
Cc: Cynthia Browne/DC/USEPA/US@EPA
Date: 10/04/2012 06:42 PM
Subject: Re: Meeting Request for Environmental Justice Stakeholders w/ Gina McCarthy

Our all staff retreat is in CA all next week. I'm arranging a meeting on behalf of Dr. Jalonne White-Newsome from WE ACT, the National Latino Partnership on Climate Change and other grassroots and environmental justice stakeholders. Impacted communities would like to weigh in directly. The meeting next week is focused on green group members.

I hope this clarification helps.

Sent from my HTC smartphone on the Now Network from Sprint!

----- Reply message -----

From: "Cindy Huang" <Huang.Cindy@epamail.epa.gov>
To: "Stephanie Maddin" <smaddin@earthjustice.org>
Cc: "Cynthia Browne" <Browne.Cynthia@epamail.epa.gov>
Subject: Meeting Request for Environmental Justice Stakeholders w/ Gina
McCarthy
Date: Thu, Oct 4, 2012 6:19 pm

Hi Stephanie,

Gina's going to on an out-of-town business trip and would like to know if Earthjustice would like to join in on a meeting she's having on the same subject with Sierra Club, EDF, and NRDC. Their meeting is on 10/11 at 2pm. If you're ok with that, I'll include you to their meeting.

Thanks!

Sincerely,
Cindy

Cindy Huang
(202) 564-7404

[cid:1__=0ABBF01EDFE9F9548f9e8a93@epamail.epa.gov]Stephanie Maddin
---10/03/2012 06:54:30 PM---Thanks so much Cindy! Sent from my HTC smartphone on the Now Network from Sprint!

From: Stephanie Maddin <smaddin@earthjustice.org>
To: Cindy Huang/DC/USEPA/US@EPA
Date: 10/03/2012 06:54 PM
Subject: Re: Meeting Request for Environmental Justice Stakeholders w/ Gina McCarthy

Thanks so much Cindy!

Sent from my HTC smartphone on the Now Network from Sprint!

----- Reply message -----

From: "Cindy Huang" <Huang.Cindy@epamail.epa.gov>
To: "Stephanie Maddin" <smaddin@earthjustice.org>
Subject: Meeting Request for Environmental Justice Stakeholders w/ Gina McCarthy
Date: Wed, Oct 3, 2012 6:47 pm

Hi Stephanie - I just wanted to let you know I got your email and I'll get back to you tomorrow (hopefully).

Sincerely,
Cindy

Cindy Huang
(202) 564-7404

[cid:1__=0ABBF01FDFFEEAF328f9e8a93@epamail.epa.gov]Stephanie Maddin
---10/02/2012 04:30:18 PM---Hello Cindy, I write to request a meeting on behalf of environmental justice stakeholders with Gina

From: Stephanie Maddin <smaddin@earthjustice.org>
To: Cindy Huang/DC/USEPA/US@EPA
Date: 10/02/2012 04:30 PM

Subject: Meeting Request for Environmental Justice Stakeholders w/ Gina
McCarthy

Hello Cindy,

I write to request a meeting on behalf of environmental justice stakeholders with Gina McCarthy regarding the PM 2.5 NAAQS during the week of October 22nd. A full list of participants is being finalized. Many thanks in advance for your consideration.

Very best,

Stephanie Maddin
Legislative Counsel
Earthjustice
Suite 702
Washington DC, 20036
T: 202-745-5210
F: 202-667-2356
www.earthjustice.org<<http://www.earthjustice.org/>>

Because the earth needs a good lawyer

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[attachment "graycol.gif" deleted by Cindy Huang/DC/USEPA/US]



graycol.gif

Enesta Jones/DC/USEPA/US
11/13/2012 03:41 PM

To: Jan Cortelyou-Lee
cc: John Millett, Jenny Noonan
bcc:
Subject: Re: ACTION: EPA response on PM petitions

He is also seeking:

A copy of the National Cattlemen's Beef Association Aug. 22, 2007, petition for reconsideration of the PM rule?

Enesta Jones
Press Office
U.S. Environmental Protection Agency
Desk: 202.564.7873
Cell: 202.236.2426

Jan Cortelyou-Lee [So ... he's not looking for a June 27, 2011 respo...](#) 11/13/2012 03:33:34 PM

From: Jan Cortelyou-Lee/RTP/USEPA/US
To: Enesta Jones/DC/USEPA/US@EPA
Cc: John Millett/DC/USEPA/US@EPA, Jenny Noonan/RTP/USEPA/US@EPA
Date: 11/13/2012 03:33 PM
Subject: Re: ACTION: EPA response on PM petitions

So ... he's not looking for a June 27, 2011 response but rather a May 13, 2010 response on credits for emission reductions from outside the nonattainment area to be considered in meeting the Act's reasonable further progress requirement?

I'll see if we can track that down.

Jan Cortelyou-Lee
United States Environmental Protection Agency
Office of Air Quality Planning and Standards
MD-C404-03
109 TW Alexander Drive
Research Triangle Park, NC 27709
phone: 919-541-5393
FAX: 919-541-2464

Enesta Jones [Note to you from me: Doc is dated '09, not '11. F...](#) 11/13/2012 03:20:45 PM

From: Enesta Jones/DC/USEPA/US
To: Jan Cortelyou-Lee/RTP/USEPA/US@EPA
Cc: John Millett/DC/USEPA/US@EPA, Jenny Noonan/RTP/USEPA/US@EPA
Date: 11/13/2012 03:20 PM
Subject: Re: ACTION: EPA response on PM petitions

Note to you from me: Doc is dated '09, not '11.

From Anthony:

This might help: I've attached an EPA court filing from earlier this month. In that filing on page 2 EPA mentions its May 13, 2010, granting in part of ALA's petition. In the same filing on page 3 EPA mentions an April 25, 2011, granting of two additional ALA requests.

[attachment "status.pdf" deleted by Jan Cortelyou-Lee/RTP/USEPA/US]

Enesta Jones
Press Office
U.S. Environmental Protection Agency
Desk: 202.564.7873
Cell: 202.236.2426

Jan Cortelyou-Lee We received one petition from ALA (Earthjustice... 11/13/2012 03:08:22 PM

From: Jan Cortelyou-Lee/RTP/USEPA/US
To: Enesta Jones/DC/USEPA/US@EPA
Cc: John Millett/DC/USEPA/US@EPA, Jenny Noonan/RTP/USEPA/US@EPA
Date: 11/13/2012 03:08 PM
Subject: Re: ACTION: EPA response on PM petitions

We received one petition from ALA (Earthjustice) in June 2007 on the PM2.5 implementation rule.

Below is the response we issued in April 2011. We could not find a June 27, 2011 response....

[attachment "EPA response to petition on CAIR RACT econ feas condens 042511.pdf" deleted by Jan Cortelyou-Lee/RTP/USEPA/US]

Jan Cortelyou-Lee
United States Environmental Protection Agency
Office of Air Quality Planning and Standards
MD-C404-03
109 TW Alexander Drive
Research Triangle Park, NC 27709
phone: 919-541-5393
FAX: 919-541-2464

Enesta Jones Anything? Enesta Jones Press Office 11/13/2012 03:04:11 PM

From: Enesta Jones/DC/USEPA/US
To: John Millett/DC/USEPA/US@EPA
Cc: Jan Cortelyou-Lee/RTP/USEPA/US@EPA, Jenny Noonan/RTP/USEPA/US@EPA
Date: 11/13/2012 03:04 PM
Subject: Re: ACTION: EPA response on PM petitions

Anything?

Enesta Jones
Press Office
U.S. Environmental Protection Agency
Desk: 202.564.7873
Cell: 202.236.2426

John Millett adding Jenny -- Alison's out [REDACTED] Jenny's doi... 11/13/2012 12:04:45 PM

From: John Millett/DC/USEPA/US
To: enesta.jones@EPA
Cc: Jan Cortelyou-Lee/RTP/USEPA/US@EPA, Jenny Noonan/RTP/USEPA/US@EPA
Date: 11/13/2012 12:04 PM
Subject: Re: ACTION: EPA response on PM petitions

adding Jenny -- Alison's out [REDACTED], so Jenny's doing the honors today . . .

~~~~~  
John Millett  
Office of Air and Radiation Communications  
U.S. Environmental Protection Agency  
5411 Ariel Rios Building North  
Washington, DC 20460  
Phone: 202/564-2903  
Cell: 202/510-1822

Enesta Jones

Enesta Jones Press Office

11/13/2012 11:55:47 AM

---

From: Enesta Jones/DC/USEPA/US  
To: John Millett/DC/USEPA/US@EPA, Jan Cortelyou-Lee/RTP/USEPA/US@EPA  
Date: 11/13/2012 11:55 AM  
Subject: ACTION: EPA response on PM petitions

---

Enesta Jones  
Press Office  
U.S. Environmental Protection Agency  
Desk: 202.564.7873  
Cell: 202.236.2426

----- Forwarded by Enesta Jones/DC/USEPA/US on 11/13/2012 11:55 AM -----

From: Anthony Lacey <alacey@iwpnews.com>  
To: Stacy Kika/DC/USEPA/US@EPA, Enesta Jones/DC/USEPA/US@EPA, Cathy Milbourn/DC/USEPA/US@EPA  
Date: 11/13/2012 11:54 AM  
Subject: EPA response on PM petitions

---

Hello -- wasn't sure who to send this request to.

I'm looking for two EPA responses to the American Lung Association on the group's petition for reconsideration of the Clean Air Fine Particle Implementation Rule issued April 25, 2007.

ALA petitioned EPA in late 2007 to ask for changes to the rule. EPA issued two responses -- one dated April 25, 2011, and one date June 27, 2011.

Can you please send me both EPA responses ASAP? Thanks!

Best wishes,

--

Anthony Lacey  
Managing Editor  
Inside EPA

Tel: 703-416-8536  
Fax: 703-416-8543  
alacey@iwpnews.com



Gina  
McCarthy/DC/USEPA/US  
06/29/2009 07:04 PM

To Adora Andy  
cc  
bcc  
Subject Re: DECISION: desert rock filing

Adora - sorry for the lack of a heads up on this. [REDACTED]

Adora Andy

----- Original Message -----

**From:** Adora Andy  
**Sent:** 06/29/2009 04:18 PM EDT  
**To:** Gina McCarthy  
**Cc:** Betsaida Alcantara  
**Subject:** DECISION: desert rock filing

Hey Gina,  
[REDACTED]

Thanks so much,  
Adora

Adora Andy  
Press Secretary  
U.S. Environmental Protection Agency  
Office of Public Affairs  
202-564-2715  
andy.adora@epa.gov

----- Forwarded by Adora Andy/DC/USEPA/US on 06/29/2009 04:17 PM -----

From: Lisa Heinzerling/DC/USEPA/US  
To: Adora Andy/DC/USEPA/US@EPA, "Allyn Brooks-LaSure" <brooks-lasure.allyn@epa.gov>  
Date: 06/29/2009 04:13 PM  
Subject: Re: DECISION: desert rock filing

[REDACTED]  
Adora Andy

----- Original Message -----

**From:** Adora Andy  
**Sent:** 06/29/2009 03:18 PM EDT  
**To:** Lisa Heinzerling; "Allyn Brooks-LaSure" <brooks-lasure.allyn@epa.gov>  
**Subject:** DECISION: desert rock filing

[REDACTED]  
Cathy Milbourn

----- Original Message -----

**From:** Cathy Milbourn  
**Sent:** 06/29/2009 03:11 PM EDT  
**To:** Adora Andy  
**Cc:** Roxanne Smith; Brendan Gilfillan

**Subject:** DECISION: desert rock filing

Hi Adora--

Brian Doster

Fett

**Subject:** Fw: desert rock filing

John,

Just realized I have not yet given you a heads up about another filing today in the Desert Rock PSD permit dispute before the EAB. We're responding this afternoon to several of the charges described in this article below from the EAB. Copied further below is a message from Dawn Reeves asking for our filing today. My preference is [REDACTED]

For background here is a copy of the draft response as it stands right now so you can see what we plan to say. This draft should not be released, since its not final yet. I've got to focus on finishing up the filing right now, but if I get the chance, I'll suggest some talking points based on the text of the filing.

[attachment "EPA Region 9 reply to remand oppositions 06 29 09 am.doc" deleted by Lisa Heinzerling/DC/USEPA/US]

## **Industry Attacks EPA, Activist Meetings Over Key Utility Air Permit**

Industry is raising major legal concerns after the Obama EPA met with activists opposed to new coal plants shortly before reversing course in a long-running Environmental Appeals Board (EAB) case, switching from defending the air permit the agency's Region IX issued last year for a proposed New Mexico power plant to seeking a voluntary remand of the permit to reconsider four key issues.

Lawyers for the Desert Rock facility filed [a June 11 brief](#) in the EAB case highlighting a March 2 meeting between senior EPA policy counsel Robert Sussman and the Sierra Club, and note the following month the Obama EPA Region IX dropped the Bush EPA's defense of the Desert Rock prevention of significant deterioration (PSD) permit and instead sought remand.

Industry also criticizes EPA's April 24 decision to grant activists' petition for reconsideration of the Bush fine particulate matter (PM2.5) surrogate rule. The rule, used to justify portions of the Desert Rock permit, also stayed a grandfathering provision that applies to Desert Rock, according to the industry brief.

“[T]his sequence of events raises serious concerns about the integrity of EPA Region IX’s actions in this case,” the brief says. Two of the groups challenging the permit had a closed-door meeting with EPA political appointees and at least one staff attorney, during which the challengers laid out their litigation strategy for projects such as Desert Rock, discussed the proposed New Mexico plant’s permit, and “specifically requested that EPA revoke an established EPA rule related to the defense of the Desert Rock PSD permit,” the brief says.

At issue is industry’s opposition to EPA Region IX’s April 27 request to the EAB to allow the agency to voluntarily remand the final PSD permit to review issues that could have broad implications on agency policy, including consideration of integrated gasification combined cycle technology to capture carbon dioxide in best available control technology reviews, the use of coarse particulate matter as a surrogate for measuring PM2.5, the issuance of a final permit before completing Endangered Species Act consultation and the sufficiency of the additional impacts analysis for the proposed facility.

In the request, EPA said a complete remand “will promote efficiency in the agency’s decisionmaking and potentially enable Region IX to resolve several disputed issues.”

But industry’s brief says no other parties in the EAB case, *In re: Desert Rock Energy Company*, were informed of the meetings between EPA and activists in the run-up to the agency’s remand request, and seeks to identify the meetings as an improper impetus for the agency’s change in position on the permit.

The brief says EPA’s “unprecedented” motion for a voluntary remand “is the culmination of a strategic end-run around this board’s authority and the law that applies to Desert Rock Energy *today*, as opposed to the law that might apply to Desert Rock Energy if it were forced to begin the PSD permitting process again.”

Further, industry argues that if EAB grants the remand, that “would have severe collateral reverberations throughout the regulated community, slowing the already-glacial pace of development and shaking the trust of participants in every stage of all sorts of permit proceedings” because the remand motion “is based on the expectation of future changes in EPA rules or policies that might, in the region’s view, affect the validity of the Desert Rock permit that has already been issued. This is a remarkable proposition.”

Finally, it calls the agency's remand request "a naked attempt to stall previously-permitted projects so that no new coal-fired power plants are approved before EPA can overhaul the PSD permitting program to align it with the new Obama administration's policy goals."

However, environmentalists in a [June 11 filing](#) broadly support EPA's request and seek to downplay industry's concerns. "Until the board has made a final determination on a permit appeal, it has broad discretion within the administrative review process to remand permits, allow the region to withdraw all or part of a permit, or to refer permit appeals to the administrator. Nothing in either the Clean Air Act or EPA's implementing regulations compel the EAB to itself resolve all contested issues in a PSD permit appeal once review has been granted."

Additionally, they say, "EPA has detailed sound reasons for its request for remand of the permit, including changes in EPA regulations, changes in policy and new technical information."

Activists also asked EAB June 15 [for additional time](#) to respond to some of the issues raised by the Desert Rock filing as well as a new *amicus* in the case, [the American Coalition for Clean Coal Electricity](#), which EAB last month gave permission to join the case to oppose EPA's remand request.

On June 16, EAB [granted environmentalists' request](#), giving the groups until June 29 to respond to industry's arguments.

In addition, EPA in a [June 19 request](#) to EAB asks the board to allow it the opportunity to rebut some of Desert Rock Energy Company (DREC) "inaccurate and misleading statements. . . . In particular, DREC has charged in its response that Region IX has exhibited bad faith by requesting a voluntary remand on the basis of (1) a change in regulatory requirements that is prospective in nature and not presently effective; (2) a willful misrepresentation of the administrative record in this matter; (3) grounds that are frivolous and serve only as pretext for other purposes; and (4) improper communications between the petitioners and EPA officials (including the undersigned counsel). Region IX disputes these assertions and requests an opportunity to demonstrate that these charges are erroneous."

Meanwhile, EPA appears to be rejecting a flurry of industry lobbying asking the agency to drop its bid for the voluntary remand of the Desert Rock permit. Proponents of the plant have been meeting in recent weeks

with top agency officials, including EPA Administrator Lisa Jackson and Region IX Acting Administrator Laura Yoshii, apparently to urge the agency to back away from the remand.

For example, Navajo Nation President Joe Shirley -- who supports the project, to be built on Navajo land, and sees it as a key economic driver for the tribal nation -- met with Jackson June 12. Shirley called the meeting "helpful" but said the focus of the meeting was on the plant's potential as a carbon sequestration test project, rather than on EPA changing its mind, one source says.

Additionally, Desert Rock proponents held a face-to-face meeting with Yoshii earlier this month in what appears to be another bid to convince the agency to back away from the remand, one environmentalist says. A Desert Rock source declined to confirm the nature of the meeting.

But the activist says Desert Rock developers want to "pull political strings" to convince EPA to back away from the remand request. The source says, "I find it somewhat ironic that they're now running behind the scenes to try to change the game at the 11th-hour" while they are complaining about alleged improper communications between EPA and environmentalists. -- *Dawn Reeves*

----- Forwarded by Brian Doster/DC/USEPA/US on 06/29/2009 12:14 PM -----

From: dawn reeves <dawn.reeves@iwpnews.com>  
To: Brian Doster/DC/USEPA/US@EPA  
Date: 06/29/2009 12:05 PM  
Subject: desert rock filing

---

Hello Brian,

This is Dawn Reeves at Inside EPA requesting that you forward me your Desert Rock filing once it's filed today with EAB as it sometimes takes EAB a bit to post on the site.

Thanks much,

Dawn

703-562-8766

Gina  
McCarthy/DC/USEPA/US  
02/22/2012 05:12 PM

To: Al Armendariz  
cc: mccabe.janet  
bcc:  
Subject: Re: Fw: FYI - March 2 - Attendee List for Meeting with ODEQ  
- Re: PSO Plans to Meet Air Quality Rules

I think we are both on the video. [REDACTED]

Al Armendariz

Hi, Wanted to make sure you have seen this. I g...

02/22/2012 05:00:44 PM

From: Al Armendariz/R6/USEPA/US  
To: mccabe.janet@epa.gov, McCarthy.Gina@epamail.epa.gov  
Date: 02/22/2012 05:00 PM  
Subject: Fw: FYI - March 2 - Attendee List for Meeting with ODEQ - Re: PSO Plans to Meet Air Quality Rules

Hi,

Wanted to make sure you have seen this. I got calls last week from ODEQ and the Governor's secretary of environment last week to say that they would like to come to Region 6 to discuss an "agreement" that AEP-PSO as reached with Sierra Club that ODEQ and OK Gov are supportive of. According to Steve, the plan incorporates compliance with RH and MATS into a single SIP, which would be proposed to replace our RH FIP. Steve is also happy about the potential GHG reductions.

Other than that, I don't know the details. A meeting is being set-up for March 2 [REDACTED]  
[REDACTED]  
[REDACTED]

How are your schedules? Can we get either of you on the video or conf line?

Thanks.

Al

---

Al Armendariz  
Regional Administrator  
Environmental Protection Agency  
Region 6  
Dallas, Texas  
armendariz.al@epa.gov  
office: 214-665-2100  
twitter: @al\_armendariz

----- Forwarded by Al Armendariz/R6/USEPA/US on 02/22/2012 03:55 PM -----

From: Carl Edlund/R6/USEPA/US  
To: Connie Sanchez/R6/USEPA/US@EPA, Layla Mansuri/R6/USEPA/US@EPA, John Blevins/R6/USEPA/US@EPA, Suzanne Murray/R6/USEPA/US@EPA, Darrin Larson/R6/USEPA/US@EPA, Lynda Carroll/R6/USEPA/US@EPA, Al Armendariz/R6/USEPA/US@EPA  
Cc: Chrissy Mann/R6/USEPA/US@EPA, Deanna Bradford/R6/USEPA/US@EPA, Margaret Oldham/R6/USEPA/US@EPA, Jeanette Morgan/R6/USEPA/US@EPA, "Thomas Diggs" <Diggs.Thomas@epamail.epa.gov>, Donaldson.Guy@epa.gov, "Joe

Kordzi" <Kordzi.Joe@epamail.epa.gov>

Date: 02/22/2012 12:33 PM

Subject: Re: FYI - March 2 - Attendee List for Meeting with ODEQ - Re: PSO Plans to Meet Air Quality Rules

---

I presume that Tom Diggs, Guy Donaldson and Joe Kordzi are invited. Let me know if not.  
Sent by EPA Wireless E-Mail Services

----- Original Message -----

**From:** Connie Sanchez

**Sent:** 02/22/2012 09:54 AM CST

**To:** Layla Mansuri; John Blevins; Carl Edlund; Suzanne Murray; Darrin Larson; Lynda Carroll; Al Armendariz

**Cc:** Chrissy Mann; Deanna Bradford; Margaret Oldham; Jeanette Morgan

**Subject:** FYI - March 2 - Attendee List for Meeting with ODEQ - Re: PSO Plans to Meet Air Quality Rules  
See list of attendees below.

Topic: PSO plans to meet air quality rules.

Attendees:

Secretary Gary Sherrer, OK Secretary of Environment

Secretary Mike Ming, OK Secretary of Energy

Steve Thompson, OK Dept. of Environmental Quality, Executive Director

Eddie Terrill, OK Dept. of Environmental Quality, Air Quality Division Director

Stuart Solomon, Public Service Company of OK, President and COO

Bud Ground, Public Service Company of OK, Mgr. Governmental & Environmental Affairs

Cindy Przekurat  
Executive Secretary to the Director  
Oklahoma Department of Environmental Quality  
707 N. Robinson, PO Box 1677  
Oklahoma City, Oklahoma 73101-1677  
405-702-7161  
[cindy.przekurat@deq.ok.gov](mailto:cindy.przekurat@deq.ok.gov)

Gina  
McCarthy/DC/USEPA/US  
09/02/2011 09:50 AM

To: Andrea Drinkard  
cc  
bcc  
Subject: Re: Fw: Newport News Daily Press (9-2) Dominion plans to shutter Yorktown and Chesapeake power plants between 2015 and 2022

They have language in here that should help us. We should highlight that. They dont really seems to be blaming us.

Andrea Drinkard    Andrea Drinkard U.S. Environmental Protection...    09/02/2011 09:43:16 AM

From: Andrea Drinkard/DC/USEPA/US  
To: Gina McCarthy/DC/USEPA/US@EPA  
Date: 09/02/2011 09:43 AM  
Subject: Fw: Newport News Daily Press (9-2) Dominion plans to shutter Yorktown and Chesapeake power plants between 2015 and 2022

Andrea Drinkard  
U.S. Environmental Protection Agency  
Office of Air and Radiation  
Email: drinkard.andrea@epa.gov  
Phone: 202.564.1601  
Cell: 202.236.7765

----- Forwarded by Andrea Drinkard/DC/USEPA/US on 09/02/2011 09:44 AM -----

From: Betsaida Alcantara/DC/USEPA/US  
To: Michael Kulik/R3/USEPA/US@EPA, David Bloomgren/DC/USEPA/US@EPA, Andrea Drinkard/DC/USEPA/US@EPA, John Millett/DC/USEPA/US@EPA  
Date: 09/02/2011 09:14 AM  
Subject: Re: Fw: Newport News Daily Press (9-2) Dominion plans to shutter Yorktown and Chesapeake power plants between 2015 and 2022

HQ will put together a statement. Mick, let us know if you get media inquiries on this.

Michael Kulik    FYI --Mick    09/02/2011 08:39:49 AM

From: Michael Kulik/R3/USEPA/US  
To: Betsaida Alcantara/DC/USEPA/US@EPA  
Date: 09/02/2011 08:39 AM  
Subject: Fw: Newport News Daily Press (9-2) Dominion plans to shutter Yorktown and Chesapeake power plants between 2015 and 2022

FYI  
--Mick

----- Forwarded by Michael Kulik/R3/USEPA/US on 09/02/2011 08:39 AM -----

From: Roy Seneca/R3/USEPA/US  
To: Shawn Garvin/R3/USEPA/US@EPA, William Early/R3/USEPA/US, Daniel Ryan/R3/USEPA/US@EPA, Bonnie Smith/R3/USEPA/US, Michael Kulik/R3/USEPA/US@EPA, Terri-A White/R3/USEPA/US@EPA, Patrick Egan/R3/USEPA/US@EPA, David Arnold/R3/USEPA/US@EPA, Diana Esher/R3/USEPA/US@EPA, Stacie Driscoll/R3/USEPA/US@EPA, Linda Miller/R3/USEPA/US@EPA, Donna

Heron/R3/USEPA/US@EPA, David Sternberg/R3/USEPA/US@EPA, Lawrence  
Teller/R3/USEPA/US@EPA, Richard Killian/R3/USEPA/US@EPA  
Date: 09/02/2011 08:29 AM  
Subject: Newport News Daily Press (9-2) Dominion plans to shutter Yorktown and Chesapeake power plants  
between 2015 and 2022

---

## **Dominion plans to shutter Yorktown and Chesapeake power plants between 2015 and 2022**

By [Peter Frost, pfrost@dailypress.com](mailto:pfrost@dailypress.com) | 247-4744

8:55 PM EDT, September 1, 2011

YORK — Dominion Virginia Power said Thursday that it plans to close a coal-fired power plant in Chesapeake by 2016 and shutter one of the two coal-fired units at its Yorktown Power Station by 2015 in response to an expected tightening of federal environmental regulations.

The utility's preliminary plans, outlined in its semiannual Integrated Resource Plan submitted to the Virginia State Corporation Commission, could result in the loss of 145 jobs in Chesapeake and dozens more in York over the next five years.

The move also could raise customers' rates over the long term and result in a loss of tax revenue for York County and the city of Chesapeake, said Jim Norvelle, a Dominion spokesman in Richmond.

The Yorktown Power Station, which has been open since 1957, sits along the York River near Seaford. It employs about 127 people and provides enough power for 88,750 homes.

Because of three proposed Environmental Protection Agency policy changes, the utility may be forced shutter the York station entirely by 2022, said J. David Rives, Dominion's senior vice president of fossil and hydro generation.

Rives stressed that the plans are not final and cautioned that they could change within the next two years, depending on the outcome of the three pending updates to EPA regulations.

### **Top industrial polluters**

Both local plants ranked among the state's biggest industrial polluters in 2009, according to the Toxic Release Inventory, a report released in March of this year that examines water, air and land pollution.

The Yorktown Power Station held the 10<sup>th</sup> spot on the list with annual emissions of 1.32 million pounds, down from 1.39 million pounds a year earlier.

The Chesapeake Energy Center, which opened in 1953 on the Elizabeth River, was Virginia's fourth-biggest polluter in 2009, releasing 2.18 million pounds of toxins, according to the report.

While Dominion insists each plant meets current environmental standards, the company acknowledges that both of the aging plants — each of which is more than 50 years old — eventually would need to be replaced.

Either way, Norvelle said, customers' rates are expected to rise.

"We'll have to make additional investments regardless of the outcome," Norvelle said. "If you look at the choices we have to make, do you invest in the power station that's more than 50 years old that's working on a short life span, or do you invest in a new power station that will be open for 40 to 60 more years?"

Employees at both Hampton Roads plants were informed of the utility's plans this week.

"This is a huge cultural shift for any utility," Rives said. "For us to enter a mode where we're actually putting plants down is a pretty traumatic thing. We're still working through all of this and we have not given (employees) any numbers (on job cuts) because frankly we don't have them yet."

Shuttering the plants also could hurt tax revenues in York and Chesapeake. In 2010, Dominion paid York \$2.4 million in taxes, the bulk of which came from the power station, Norvelle said. The company paid the city of Chesapeake \$7.4 million taxes last year.

Dominion's plan to close the plants was cheered by environmental groups, including the Virginia chapter of the Sierra Club.

"We're very pleased that they're deciding to retire these ancient plants, each of which presents serious health risks to Hampton Roads," said Glen Besa, director of the Sierra Club's Virginia chapter. "On the other hand, we're still looking for Dominion to invest more on renewable energy, particularly solar and wind power."

### **EPA's proposed changes**

The EPA's three policy updates, all in draft form, would tighten regulations on power plants, particularly those that use coal as a primary fuel to generate electricity.

Two of the updates include proposed air-quality standards that would require power companies to reduce the emission of toxins like nitrous oxide, mercury and sulfur dioxide. A third proposed policy change, the most problematic for the York plant, deals with the water the plant discharges into the York River.

To comply with the new standards, Dominion would be required to install various types of equipment like closed-loop cooling towers, scrubbers and filters that could cost up to \$1 billion, Rives said.

Dominion has submitted comments on each of the proposals, "parts of which we think are

reasonable, parts that are not," Rives said. Nonetheless, he said, the utility is pursuing the plan to shutter the two local facilities as if the new regulations will be enacted.

Since both local plants were built before 1960, the cost of making the upgrades is prohibitive, Rives said. For comparison, Rives highlighted Dominion's proposal to build a new natural gas-powered plant in Warren County that would generate about twice as much electricity at a cost of about \$1.1 billion. That plan is pending with state regulators.

"Based on what we know at this time, it's best for the rate-payer that we not invest in these old facilities," Rives said.

Instead, the utility is floating a plan to build two additional natural gas-fired power stations in Virginia between 2016 and 2019. Dominion has not identified sites for either plant.

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Roy Seneca  
EPA Region 3 Press Officer  
Office of Public Affairs  
seneca.roy@epa.gov  
(215) 814-5567

Gina  
McCarthy/DC/USEPA/US  
08/06/2009 12:32 PM

To: Beth Craig  
cc  
bcc  
Subject: Re: Fw: Clean Air Act Title V Petition - Big Stone

Please. Thx  
Beth Craig

----- Original Message -----

**From:** Beth Craig  
**Sent:** 08/06/2009 09:06 AM EDT  
**To:** Gina McCarthy  
**Subject:** Re: Fw: Clean Air Act Title V Petition - Big Stone

Dear Gina,

yes. [REDACTED]

Thanks, Beth

Gina McCarthy

Good summary thanks. Looks like there are a n...

08/06/2009 09:05:14 AM

**From:** Gina McCarthy/DC/USEPA/US  
**To:** Beth Craig/DC/USEPA/US@EPA  
**Date:** 08/06/2009 09:05 AM  
**Subject:** Re: Fw: Clean Air Act Title V Petition - Big Stone

Good summary thanks. Looks like there are a number of new issues raised.

Beth Craig

----- Original Message -----

**From:** Beth Craig  
**Sent:** 08/05/2009 04:44 PM EDT  
**To:** "Gina Mccarthy" <mccarthy.gina@epa.gov>  
**Subject:** Fw: Fw: Clean Air Act Title V Petition - Big Stone

Gina, As requested, Beth

-----  
Sent by EPA Wireless E-Mail Services  
Patricia Embrey

----- Original Message -----

**From:** Patricia Embrey  
**Sent:** 08/05/2009 04:04 PM EDT  
**To:** Beth Craig  
**Cc:** Jeffrey Clark  
**Subject:** Re: Fw: Clean Air Act Title V Petition - Big Stone

Beth --

Attached is the summary you requested. I hope this is helpful to Gina. Please let us know if you need anything further.

Patricia

[attachment "GHG issues in Big Stone.doc" deleted by Gina McCarthy/DC/USEPA/US]

Beth Craig

Dear Patricia, Is it possible for you all to put toge...

08/05/2009 08:39:09 AM

From: Beth Craig/DC/USEPA/US  
To: Patricia Embrey/DC/USEPA/US@EPA  
Cc: Jeffrey Clark/RTP/USEPA/US@EPA  
Date: 08/05/2009 08:39 AM  
Subject: Fw: Clean Air Act Title V Petition - Big Stone

---

Dear Patricia,

Is it possible for you all to put together a short summary of the arguments that the Sierra Club made on why GHG are currently regulated under the CAA? Gina would like to get a copy. It is the Issue#3 section of the attached.

Thanks, Beth

----- Forwarded by Beth Craig/DC/USEPA/US on 08/05/2009 08:36 AM -----

From: Carol Rushin/R8/USEPA/US  
To: Steve Tuber/P2/R8/USEPA/US@EPA, Debrah Thomas/P2/R8/USEPA/US@EPA, videtich.callie@epa.gov, Robert Ward/RC/R8/USEPA/US@EPA, ornstein.peter@epa.gov  
Cc: Beth Craig, gaydosh.mike@epa.gov  
Date: 08/04/2009 08:41 AM  
Subject: Fw: Clean Air Act Title V Petition - Big Stone

---

Carol Rushin  
Acting Regional Administrator  
USEPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129  
Phone: 303.312.6308  
FAX: 303.312.6882

----- Forwarded by Carol Rushin/R8/USEPA/US on 08/04/2009 06:40 AM -----

**George Hays**  
<[georgehays@mindspring.com](mailto:georgehays@mindspring.com)>  
m>

08/03/2009 08:37 PM

To: LisaP Jackson/DC/USEPA/US@EPA, Carol Rushin/R8/USEPA/US@EPA, DENRINTERNET@state.sd.us, TGraumann@otpc.com, cwmadsen@bgpw.com  
cc: "Thomas Welk" <[tjwelk@bgpw.com](mailto:tjwelk@bgpw.com)>, Callie Videtich/P2/R8/USEPA/US@EPA, Christopher Ajayi/R8/USEPA/US@EPA, Sara Laumann/RC/R8/USEPA/US@EPA, Brian.Gustafson@state.sd.us, Roxanne.Giedd@state.sd.us, Carl Daly/R8/USEPA/US@EPA  
Subject: Clean Air Act Title V Petition - Big Stone

Pursuant to Section 42 USCS § 7661d(c) of the Clean Air Act, Sierra Club and Clean Water Action petition the Administrator to object to the Title V Permit issued by South Dakota DENR for the Big Stone power plant. A copy of the petition is attached. The exhibits referred to in the

petition can be downloaded by accessing the following link:

<http://www.sendspace.com/file/t8p2om>

George E. Hays

Attorney at Law

236 West Portal Avenue #110

San Francisco, CA 94127

Office: 415/566-5414 Fax: 415/731-1609

e-mail: [georgehays@mindspring.com](mailto:georgehays@mindspring.com)[attachment "2009 8-3 Big Stone T5 Petition Final.pdf" deleted by [Patricia Embrey/DC/USEPA/US](#)]

**Gina  
McCarthy/DC/USEPA/US**  
05/11/2011 04:05 PM

To: Heidi Ellis  
cc  
bcc  
Subject: Fw: Philly Public Hearing

FYI

----- Forwarded by Gina McCarthy/DC/USEPA/US on 05/11/2011 04:05 PM -----

From: Steve Page/RTP/USEPA/US  
To: Gina McCarthy/DC/USEPA/US@EPA  
Date: 05/11/2011 12:00 PM  
Subject: Philly Public Hearing

---

Gina,

This is the info you requested. Attached is a signup sheet.

On Tuesday, May 24<sup>th</sup>, the Office of Air will hold a public hearing on the proposed Power Plant Mercury and Air Toxics Standards in Philadelphia, Pa. We will hold the hearing at the Westin Philadelphia at Liberty Place (99 South 17<sup>th</sup> Street) in the Georgian Room. It will begin at 9 am and continue through 8 pm or later to assure that we hear from all interested speakers. Breaks are planned from 12:30 – 2 pm and 5 – 6:30 pm.

As of May 11<sup>th</sup>, we have 58 speakers registered to testify.

We also expect the Sierra Club, and American Lung Association to set up information tables outside of the hearing room. They will likely also host a press event.



Philadelphia Public Hearing 051011.doc

## List of Speakers for Public Hearing – Philadelphia, May 24, 2011

| Time        | Name                                                                                                 | Affiliation                                              | Address                                                        | Telephone  | E-Mail Address                                                                     | AV Needs          | Translation Needs |
|-------------|------------------------------------------------------------------------------------------------------|----------------------------------------------------------|----------------------------------------------------------------|------------|------------------------------------------------------------------------------------|-------------------|-------------------|
| 9:00 – 9:15 | <b>INTRODUCTIONS OF EPA HEARING PANEL &amp; OPENING STATEMENT (OVERVIEW/GROUND RULES OF HEARING)</b> |                                                          |                                                                |            |                                                                                    |                   |                   |
| 9:15        | Rabbi Daniel Swartz                                                                                  | Scranton Area Ministerium & PA Interfaith Power & Light  | Temple Hesed<br>1 Knox Rd.<br>Scranton, PA 18505               | [REDACTED] | <a href="mailto:reb_daniel@verizon.net">reb_daniel@verizon.net</a>                 |                   |                   |
| 9:20        | Deborah P. Brown                                                                                     | The American Lung Assoc.                                 | 3001 Old Gettysburg Rd.<br>Camp Hill, PA 17011                 | [REDACTED] | <a href="mailto:dbrown@lunginfo.org">dbrown@lunginfo.org</a>                       |                   |                   |
| 9:25        | Joseph Minott                                                                                        | Clean Air Council                                        | 135 S. 19 <sup>th</sup> St; Ste. 300<br>Philadelphia, PA 19103 | [REDACTED] | <a href="mailto:joe_minott@cleanair.org">joe_minott@cleanair.org</a>               |                   |                   |
| 9:30        | Charles McPhedran (someone else may come instead)                                                    | Citizens for PA's Future (PennFuture)                    | 1500 Walnut St.; Ste 502<br>Philadelphia, PA 19102             | [REDACTED] | <a href="mailto:mcphebran@pennfuture.org">mcphebran@pennfuture.org</a>             |                   |                   |
| 9:35        | Lyndsay Moseley                                                                                      | Sierra Club                                              | 408 C St., NE<br>Washington, DC 20002                          | [REDACTED] | <a href="mailto:Lyndsay.moseley@sierraclub.org">Lyndsay.moseley@sierraclub.org</a> |                   |                   |
| 9:40        | Adam Garber                                                                                          | PennEnvironment                                          | 1420 Walnut St, Ste 650<br>Philadelphia, PA 19102              | [REDACTED] | <a href="mailto:agarber@pennenvironment.org">agarber@pennenvironment.org</a>       |                   |                   |
| 9:45        | Jeanette MacNeille                                                                                   | Individual or as President of Millbourne Borough Council | 41 Erna Court<br>Millbourne, PA 19082                          | [REDACTED] | <a href="mailto:jeanette@eclipseservices.com">jeanette@eclipseservices.com</a>     |                   |                   |
| 9:50        | Paul J. Miller                                                                                       | Northeast States for Coordinated Air Use Management      | 89 South St., Suite 602<br>Boston, MA 02111                    | [REDACTED] | <a href="mailto:pmiller@nescaum.org">pmiller@nescaum.org</a>                       |                   |                   |
| 9:55        | Robert Gardner                                                                                       | Greenpeace USA                                           | 702 H St NW # 300<br>Washington D.C.,                          | [REDACTED] | <a href="mailto:robert.gardner@greenpeace.org">robert.gardner@greenpeace.org</a>   |                   |                   |
| 10:00       | Dr. Walter Tsou                                                                                      | Philadelphia Physicians for Social Responsibility        | 704 N. 23 <sup>rd</sup> St.<br>Philadelphia, PA 19130          | [REDACTED] | <a href="mailto:walter.tsou@verizon.net">walter.tsou@verizon.net</a>               |                   |                   |
| 10:05       | Reverend Cheryl Pynch                                                                                | Summit Presbyterian Church                               | 6757 Greene Street<br>Philadelphia, PA 19119                   | [REDACTED] | <a href="mailto:cpynch@summitpres.net">cpynch@summitpres.net</a>                   |                   |                   |
| 10:10       | Jay Butera                                                                                           | Individual                                               | PO Box 126<br>Gladwyne PA 19035                                | [REDACTED] | <a href="mailto:jbutera@comcast.net">jbutera@comcast.net</a>                       | Powerpoint Slides |                   |
| 10:15       | Poune Sabieri                                                                                        | Sierra Club                                              | 8815 Germantown Avenue Philadelphia, PA 19118                  | [REDACTED] | <a href="mailto:pounesaberi@yahoo.com">pounesaberi@yahoo.com</a>                   |                   |                   |
| 10:20       | Rev. Mitchell Hescox                                                                                 | Evangelical Environmental Network                        | 24 E. Franklin St<br>New Freedom, PA 17349                     | [REDACTED] | <a href="mailto:Mitch@creationcare.org">Mitch@creationcare.org</a>                 | PowerPoint Slides |                   |

\*\*\* Judith Focareta, 412-802-8296; [focja@mailmagee.edu](mailto:focja@mailmagee.edu) has requested to speak in the morning, all slots were filled prior to her request. Per Jan Cortelyou, the team will try to work her in to a morning slot. She was notified via email 5-11-11. She would prefer 9:30 or 10:00 if possible. She wants to keep the 2:55 slot just in case.

| <b>Time</b> | <b>Name</b>           | <b>Affiliation</b>                                   | <b>Address</b>                                                                       | <b>Telephone</b>                      | <b>E-Mail Address</b>                                                                    | <b>AV Needs</b> | <b>Translation Needs</b> |
|-------------|-----------------------|------------------------------------------------------|--------------------------------------------------------------------------------------|---------------------------------------|------------------------------------------------------------------------------------------|-----------------|--------------------------|
| 10:25       | Leslie G. Fields      | Sierra Club                                          | 408 C Street NE<br>Washington DC 20002                                               | 202.548.4586                          | <a href="mailto:Leslie.Fields@sierraclub.org">Leslie.Fields@sierraclub.org</a>           |                 |                          |
| 10:30       | Paul G. Billings      | American Lung Association                            | 1301 Pennsylvania Ave NW Suite 800<br>Washington, DC 20004-1725                      | 202-785-3355<br>(f) 202 -452-1805     | <a href="mailto:pbillings@lungusa.org">pbillings@lungusa.org</a>                         |                 |                          |
| 10:35       | Joy Bergey            | The Center for the Celebration of Creation           | 8812 Germantown Avenue, Philadelphia<br>PA 19118                                     | 215-836-5978                          | <a href="mailto:joybergey@gmail.com">joybergey@gmail.com</a>                             |                 |                          |
| 10:40       | Kevin M. Stewart      | American Lung Association of the Mid-Atlantic        | The Norman P. Hetrick Building<br>3001 Old Gettysburg Road<br>Camp Hill, PA 17011    | 717.541.5864 x 56<br>(f) 888.415.5757 | <a href="mailto:kstewart@lunginfo.org">kstewart@lunginfo.org</a>                         |                 |                          |
| 10:45       | Christine Guhl        | Sierra Club                                          | 78A Snyderstown Road<br>Hopewell, NJ 08525                                           | 609)510-4684                          | <a href="mailto:christine.guhl@sierraclub.org">christine.guhl@sierraclub.org</a>         |                 |                          |
| 10:50       | William Rosebrock     | Multi-state Alliance to Promote Clean Energy (MAPLE) | 14 S River Ter<br>Phillipsburg, NJ 08865                                             | 908 343 6173                          | <a href="mailto:billrose1@verizon.net">billrose1@verizon.net</a>                         |                 |                          |
| 10:55       | Corinne Wright        | Sisters of St. Francis of Philadelphia               | Aston, PA 19014                                                                      | 610-558-5353                          | <a href="mailto:cwright@osfphila.org">cwright@osfphila.org</a>                           |                 |                          |
| 11:00       | Thomas Au             | Clean Air Board of Central Pennsylvania              | 528 Garland Drive<br>Carlisle, PA 17013                                              | 717-234-7445                          | <a href="mailto:thomxau@gmail.com">thomxau@gmail.com</a>                                 |                 |                          |
| 11:05       | Ed Perry              | National Wildlife Federation                         | 440 Brush Valley Road, Boalsburg, PA.<br>16827                                       | 814-880-9593                          | <a href="mailto:paglobalwarmingoutreach@gmail.com">paglobalwarmingoutreach@gmail.com</a> |                 |                          |
| 11:10       | Horace W. Strand      | Chester Environmental Partnership                    | 1007 W. 7th Street<br>Chester, PA 19013                                              | (o) 610-872-7471<br>(f) 610-827-7470  | <a href="mailto:cepchester@aol.com">cepchester@aol.com</a>                               |                 |                          |
| 11:15       | William Kramer        | Sierra Club                                          | 226 Volkert St.<br>Highland Park, NJ 08904                                           | 732-589-8024                          | <a href="mailto:william.kramer@sierraclub.org">william.kramer@sierraclub.org</a>         |                 |                          |
| 11:20       | Scott Manaker         | American Thoracic Society                            | Univ of PA Hlth System 100 Centrex<br>3400 Spruce St<br>Philadelphia, PA, 19104-4283 | (215) 662-3201<br>(f)(215) 349-5084   | <a href="mailto:scott.manaker@uphs.upenn.edu">scott.manaker@uphs.upenn.edu</a>           |                 |                          |
| 11:25       | <b>Joe Parrish</b>    | <b>American Lung Association of New Jersey</b>       |                                                                                      | (724) 799 - 4667                      |                                                                                          |                 |                          |
| 11:30       | <b>New Jersey DEP</b> |                                                      |                                                                                      |                                       |                                                                                          |                 |                          |
| 11:35       | Michael Bradley       | The Clean Energy Group                               | 47 Junction Square Drive, Concord, MA<br>01742                                       | 978-369-5533                          | <a href="mailto:lreynolds@mjb Bradley.com">lreynolds@mjb Bradley.com</a>                 |                 |                          |
| 11:40       | Anthony DiSorbo       | Individual                                           | 221 S 12th St., Apt 609N<br>Philadelphia, PA 19107                                   | (c) (440) 263-3094                    | <a href="mailto:adisorbo@gmail.com">adisorbo@gmail.com</a>                               |                 |                          |
| 11:45       | Mariko Franz          | Individual                                           | 4622 Walnut St #2F<br>Philadelphia, PA 19139                                         | (724) 799 - 4667                      | <a href="mailto:mariko.franz@gmail.com">mariko.franz@gmail.com</a>                       |                 |                          |
| 11:50       | Paul J Mellon, Jr     | Novetas Solutions,llc                                | 4900 S Broad St., Bldg 6, Ste 210<br>Philadelphia, PA 19112                          | 215.551.3070<br>(f)215.551.3073       | <a href="mailto:pmell@comcast.net">pmell@comcast.net</a>                                 |                 |                          |

| Time            | Name                                                                                | Affiliation                                          | Address                                                            | Telephone                                              | E-Mail Address                                                                           | AV Needs          | Translation Needs |
|-----------------|-------------------------------------------------------------------------------------|------------------------------------------------------|--------------------------------------------------------------------|--------------------------------------------------------|------------------------------------------------------------------------------------------|-------------------|-------------------|
| 11:55           | Jim Black                                                                           | Partnership for Sustainability in Delaware           | 1201 N. Orange St.<br>Suite 500<br>Wilmington, De. 19801           | (302) 351-2277                                         | <a href="mailto:jim.black@consultant.com">jim.black@consultant.com</a>                   |                   |                   |
| 12:00           | Jeff A McNelly                                                                      | ARIPPA                                               | 2015 Chestnut Street, Camp Hill, PA 17011                          | 717-763-7635<br>(f) 717-763-7455                       | <a href="mailto:jamcnelly1@arippa.org">jamcnelly1@arippa.org</a>                         |                   |                   |
| 12:05           | Mervyn Kline                                                                        | Individual                                           | 1940 Morrell Street<br>Philadelphia PA 19115                       | 215-676-9499                                           | <a href="mailto:mnhke@aol.com">mnhke@aol.com</a>                                         |                   |                   |
| 12:10           | Alicia McDevitt                                                                     | Massachusetts Department of Environmental Protection | One Winter Street, 3rd floor<br>Boston, MA 02108                   | 617-556-1190<br>(f)617-574-6880<br>(Ms. Weber's phone) | <a href="mailto:sharon.weber@state.ma.us">sharon.weber@state.ma.us</a>                   |                   |                   |
| 12:15           | Catherine Bowes                                                                     | National Wildlife Federation                         |                                                                    | 802-272-1243                                           | <a href="mailto:bowes@nwf.org">bowes@nwf.org</a>                                         |                   |                   |
| 12:20           | Margaret Motheral                                                                   | Union of Concerned Scientists                        | 311 South 22nd Street # 3<br>Philadelphia PA 19103                 | 215 888 1167                                           | <a href="mailto:wildmother@mac.com">wildmother@mac.com</a>                               |                   |                   |
| 12:25           | Rabbi Kevin M. Kleinman                                                             |                                                      | 7108 Cresheim Rd.<br>Philadelphia, PA 19119                        | 718-702-6940                                           | <a href="mailto:kevinkleinman@gmail.com">kevinkleinman@gmail.com</a>                     |                   |                   |
| 12:30<br>– 2:00 | <b>LUNCH BREAK</b>                                                                  |                                                      |                                                                    |                                                        |                                                                                          |                   |                   |
| 2:00 -<br>2:10  | <b>REREADING/SUMMARIZING OF OPENING STATEMENT &amp; HEARING PANEL INTRODUCTIONS</b> |                                                      |                                                                    |                                                        |                                                                                          |                   |                   |
| 2:10            | Jay Butera                                                                          | One Million Calls For Clean Energy                   | PO Box 126<br>Gladwyne PA 19035                                    | (610) 724-7709                                         | <a href="mailto:jbutera@comcast.net">jbutera@comcast.net</a>                             | Powerpoint Slides |                   |
| 2:15            | Nancy Parks                                                                         | SC/PA Chapter/ Clean Air Committee                   | 201 West Aaron Square<br>P.O. Box 120<br>Aaronsburg, PA 16820-0120 | 814-349-5151<br>(c)814-880-0290                        | <a href="mailto:nfparks2@verizon.net">nfparks2@verizon.net</a>                           |                   |                   |
| 2:20            | Katie Feeney                                                                        | Clean Air Council                                    | 135 S 19th St., Suite 300<br>Philadelphia, PA 19103                | 215-567-4004 x112<br>(f) 215-567-5791                  | <a href="mailto:KFeeney@cleanair.org">KFeeney@cleanair.org</a>                           |                   |                   |
| 2:25            | Tyra Bryant-Stephens                                                                | The Community Asthma Prevention Program              | The Children's Hospital of Philadelphia                            | 215-590-5020                                           | <a href="mailto:stephenst@email.chop.edu">stephenst@email.chop.edu</a>                   |                   |                   |
| 2:30            | Mark Schmerling                                                                     | Individual                                           | P.O. Box 753, Bryn Athyn, Pa. 19009                                | 215 495 5223                                           | <a href="mailto:photodocmark@gmail.com">photodocmark@gmail.com</a>                       |                   |                   |
| 2:35            | Larry Gibson                                                                        | Individual                                           | 5220 Washington Avenue SE,<br>Charleston, WV 25204                 | (c) 304 542 1134<br>(o) 304 205 0920                   | <a href="mailto:danny@mountainkeeper.org">danny@mountainkeeper.org</a>                   |                   |                   |
| 2:40            | Kristen Welker-Hood                                                                 | Physicians for Social Responsibility                 | 6074 Loventree Rd<br>Columbia Md 21044                             | 202-587-5244                                           | <a href="mailto:Kwelker-hood@psr.org">Kwelker-hood@psr.org</a>                           |                   |                   |
| 2:45            | Rachele Huennekens                                                                  | Sierra Club                                          | 85 Second St. Second Floor<br>San Francisco, CA 94105              | 415) 977-5761                                          | <a href="mailto:rachele.huennekens@sierraclub.org">rachele.huennekens@sierraclub.org</a> |                   |                   |
| 2:50            | Gretchen Dahlkemper-Alfonso                                                         |                                                      |                                                                    |                                                        | <a href="mailto:gad156@hotmail.com">gad156@hotmail.com</a>                               |                   |                   |
| 2:55            | Judith Focareta                                                                     |                                                      |                                                                    |                                                        | <a href="mailto:focaja@mail.magee.edu">focaja@mail.magee.edu</a>                         |                   |                   |

| Time          | Name                    | Affiliation                          | Address                                                         | Telephone                         | E-Mail Address                                                       | AV Needs | Translation Needs |
|---------------|-------------------------|--------------------------------------|-----------------------------------------------------------------|-----------------------------------|----------------------------------------------------------------------|----------|-------------------|
| 3:00          | Eric Cheung             | Individual                           | 2208 South Bucknell Street<br>Philadelphia, PA 19145            | ██████████                        | <a href="mailto:epcheung@gmail.com">epcheung@gmail.com</a>           |          |                   |
| 3:05          | John Elwood             | Evangelical<br>Environmental Network | 110 Brighton Road<br>Andover, NJ 07821                          | 973-650-7066                      | <a href="mailto:elwood.john.m@gmail.com">elwood.john.m@gmail.com</a> |          |                   |
| 3:10          |                         |                                      |                                                                 |                                   |                                                                      |          |                   |
| 3:15          |                         |                                      |                                                                 |                                   |                                                                      |          |                   |
| 3:20          |                         |                                      |                                                                 |                                   |                                                                      |          |                   |
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| 3:45          |                         |                                      |                                                                 |                                   |                                                                      |          |                   |
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| 4:00          |                         |                                      |                                                                 |                                   |                                                                      |          |                   |
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| 4:10          |                         |                                      |                                                                 |                                   |                                                                      |          |                   |
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| 4:40          |                         |                                      |                                                                 |                                   |                                                                      |          |                   |
| 4:45          |                         |                                      |                                                                 |                                   |                                                                      |          |                   |
| 4:50          |                         |                                      |                                                                 |                                   |                                                                      |          |                   |
| 4:55          |                         |                                      |                                                                 |                                   |                                                                      |          |                   |
| 5:00-<br>6:30 | <b>DINNER BREAK</b>     |                                      |                                                                 |                                   |                                                                      |          |                   |
| 6:30          | Al Rizzo                | American Lung<br>Association         | 1301 Pennsylvania Ave NW Suite 800<br>Washington, DC 20004-1725 | 202-785-3355<br>(f) 202 -452-1805 | <a href="mailto:PBillings@lungusa.org">PBillings@lungusa.org</a>     |          |                   |
| 6:35          | <b>Gwen DuBois</b>      |                                      |                                                                 |                                   |                                                                      |          |                   |
| 6:40          | <b>Richard Humphrey</b> |                                      |                                                                 |                                   |                                                                      |          |                   |
| 6:45          | <b>Lawrence Egbert</b>  |                                      |                                                                 |                                   |                                                                      |          |                   |
| 6:50          | <b>Cindy Parker</b>     |                                      |                                                                 |                                   |                                                                      |          |                   |

| <b>Time</b> | <b>Name</b>            | <b>Affiliation</b>                    | <b>Address</b>                                            | <b>Telephone</b> | <b>E-Mail Address</b>                                        | <b>AV Needs</b> | <b>Translation Needs</b> |
|-------------|------------------------|---------------------------------------|-----------------------------------------------------------|------------------|--------------------------------------------------------------|-----------------|--------------------------|
| 6:55        | <b>Stephen Shapiro</b> |                                       |                                                           |                  |                                                              |                 |                          |
| 7:00        | Sarah Bucic            | Delaware City Environmental Coalition | 206 Washington St (PO Box 352)<br>Delaware City, DE 19706 | 302-383-6811     | <a href="mailto:rosebudd@icetec.biz">rosebudd@icetec.biz</a> |                 |                          |
| 7:05        |                        |                                       |                                                           |                  |                                                              |                 |                          |
| 7:10        |                        |                                       |                                                           |                  |                                                              |                 |                          |
| 7:15        |                        |                                       |                                                           |                  |                                                              |                 |                          |
| 7:20        |                        |                                       |                                                           |                  |                                                              |                 |                          |
| 7:25        |                        |                                       |                                                           |                  |                                                              |                 |                          |
| 7:30        |                        |                                       |                                                           |                  |                                                              |                 |                          |
| 7:35        |                        |                                       |                                                           |                  |                                                              |                 |                          |
| 7:40        |                        |                                       |                                                           |                  |                                                              |                 |                          |
| 7:45        |                        |                                       |                                                           |                  |                                                              |                 |                          |
| 7:50        |                        |                                       |                                                           |                  |                                                              |                 |                          |
| 7:55        |                        |                                       |                                                           |                  |                                                              |                 |                          |
| 8:00        |                        |                                       |                                                           |                  |                                                              |                 |                          |
| 8:05-8:15   |                        |                                       |                                                           |                  |                                                              |                 |                          |

Gina  
McCarthy/DC/USEPA/US  
04/20/2010 05:57 PM

To Janet McCabe  
cc  
bcc  
Subject Fw: Pinal County PM Designations for Tribes

Do you want to share this with Darrel in case he is out of the loop?

----- Forwarded by Gina McCarthy/DC/USEPA/US on 04/20/2010 05:56 PM -----

From: Jeffrey Clark/RTP/USEPA/US  
To: Gina McCarthy/DC/USEPA/US@EPA  
Cc: Steve Page/RTP/USEPA/US@EPA, Scott Mathias/RTP/USEPA/US@EPA, Anna Wood/DC/USEPA/US@EPA  
Date: 04/20/2010 02:36 PM  
Subject: Pinal County PM Designations for Tribes

---

Gina,

This morning in senior staff meeting, you asked about how we are dealing with the tribes in the Pinal County, AZ, designations for PM.

As I mentioned at staff meeting, we are moving ahead with designating part of the county as

[REDACTED]

[REDACTED]

[REDACTED]

[We briefed Janet on these issues in late March, and all this reflects the decisions she communicated it back to us.]

Jeff

Gina  
McCarthy/DC/USEPA/US  
05/27/2010 11:39 AM

To Janet McCabe  
cc Beth Craig, Bill Lamason, Bob Perciasepe, Drew McConville,  
Lee Veal, Richard Wayland, Steve Page  
bcc  
Subject Re: Fw: Burning Marshes to address oil?

Does anyone know what marsh areas are under consideration? Is there some way to find out through the EOC?

Janet McCabe Bob, Gina-- We discussed this issue on the 11 A... 05/27/2010 11:35:35 AM

From: Janet McCabe/DC/USEPA/US  
To: Bob Perciasepe/DC/USEPA/US@EPA, Gina McCarthy/DC/USEPA/US@EPA  
Cc: Lee Veal/DC/USEPA/US@EPA, Steve Page/RTP/USEPA/US@EPA, Beth  
Craig/DC/USEPA/US@EPA, Bill Lamason/RTP/USEPA/US@EPA, Drew  
McConville/DC/USEPA/US@EPA, Richard Wayland/RTP/USEPA/US@EPA  
Date: 05/27/2010 11:35 AM  
Subject: Fw: Burning Marshes to address oil?

Bob, Gina--

We discussed this issue on the 11 AM air data call today and have got people started pulling together the state and EPA guidelines and protocols for prescribed burns, maps showing population centers, air monitoring stations, and areas where marsh burning might be likely (the first two we have already and folks will get whatever information they can on the third), questions/issues that need to be discussed re impacts on public health of such burns, and what monitoring we would be able to do if burning were to occur.

Janet McCabe  
Office of Air and Radiation, USEPA  
Room 5426K, 1200 Pennsylvania Avenue NW  
Washington, DC 20460  
202-564-3206  
mccabe.janet@epa.gov

----- Forwarded by Janet McCabe/DC/USEPA/US on 05/27/2010 11:29 AM -----

From: Janice Nolen <JNolen@lungusa.org>  
To: Janet McCabe/DC/USEPA/US@EPA  
Date: 05/27/2010 09:34 AM  
Subject: RE: Burning Marshes to address oil?

Sent from my Android phone using TouchDown (www.nitrodesk.com)

-----Original Message-----

**From:** Paul Billings [PBillings@lungusa.org]

**Received:** 5/27/10 8:38 AM

**To:** 'page.steve@epa.gov' [page.steve@epa.gov]; Bob Perciasepe [perciasepe.bob@epa.gov];  
Wayland.Richard@epamail.epa.gov [Wayland.Richard@epamail.epa.gov];  
'mccabe.janet@epa.gov' [mccabe.janet@epa.gov]; 'mccarthy.gina@epa.gov'

[mccarthy.gina@epa.gov]

**CC:** Janice Nolen [JNolen@lungusa.org]

**Subject:** Burning Marshes to address oil?

This morning on NPR it was reported that one of the strategies being considered to address the oil in the Louisiana marshes is a prescribed burn. The story suggests that the Coast Guard's Thad Allen is supporting this approach. See link below

<http://www.npr.org/templates/story/story.php?storyId=127201085>

We are very concerned about the impact on public health of burning. We request that prior to employing this strategy, a complete and thorough analysis (Environmental Impact Statement?) of the health and environmental impacts of such a burn be conducted.

Janice and I would be happy to discuss further.

Thanks  
Paul Billings

Paul G. Billings  
Vice President National Policy & Advocacy  
American Lung Association  
1301 Pennsylvania Ave NW Suite 800  
Washington, DC 20004-1725  
Phone: 202-785-3355 x 3988  
Fax: 202 -452-1805  
[pbillings@lungusa.org](mailto:pbillings@lungusa.org)



Gina  
McCarthy/DC/USEPA/US  
05/11/2011 04:59 PM

To: Jim Jones  
cc  
bcc  
Subject: Re: Fw: Environmental Letter to United/Continental &  
American on their challenge of the EUETS

thx

Jim Jones      Gina, Chris has informed FAA (and the interage...      05/11/2011 04:58:03 PM

From: Jim Jones/DC/USEPA/US  
To: Gina McCarthy/DC/USEPA/US@EPA  
Date: 05/11/2011 04:58 PM  
Subject: Fw: Environmental Letter to United/Continental & American on their challenge of the EUETS

Gina, Chris has informed FAA (and the interagency workgroup as they had a meeting today). 



Jim Jones  
Deputy Assistant Administrator  
EPA Office of Air and Radiation  
Room 5426E Ariel Rios North  
1200 Pennsylvania Ave., NW  
Washington DC 20460  
202 564-7400

----- Forwarded by Jim Jones/DC/USEPA/US on 05/11/2011 04:54 PM -----

From: Christopher Grundler/AA/USEPA/US  
To: Jim Jones/DC/USEPA/US@EPA  
Date: 05/11/2011 04:47 PM  
Subject: Fw: Environmental Letter to United/Continental & American on their challenge of the EUETS

Sent by EPA Wireless E-Mail Services

---

**From:** "Schmidt, Jake" [jschmidt@nrdc.org]  
**Sent:** 05/11/2011 04:36 PM AST  
**To:** John Beale; Christopher Grundler  
**Cc:** Karen Laughlin; <LeFrancMA@state.gov>  
**Subject:** Environmental Letter to United/Continental & American on their challenge of the EUETS

Hi Christopher and John:

I've attached letters that NRDC, EDF, Sierra Club, Earthjustice, Center for Biological Diversity, and Environment America just sent to the CEOs of United/Continental and American over their claims to be green while at the same time bringing a legal challenge against the EU over the ETS. Also, EDF has asked both carriers to run ads in their airline magazines (see EDF's release with a link to the ads).

As you can see, this group wanted to send a signal that you can't talk about being environmentally friendly and addressing climate change while at the same time challenging the only system in the world to address these emissions. And we wanted to point out the hypocrisy of their claims.

Feel free to share these with other people in EPA. If you have any questions don't hesitate to contact me. Best regards, Jake

---

Jake Schmidt  
International Climate Policy Director  
Natural Resources Defense Council (NRDC)  
Work: 1-202-289-2388  
Mobile: 1-202-425-1515  
Email: [jschmidt@nrdc.org](mailto:jschmidt@nrdc.org)

Read my blog: <http://switchboard.nrdc.org/blogs/jschmidt/>  Aviation release 05.11.11 -final.pdf

 UnitedContinental\_Letter\_EnviroCEOs\_05.11.11 final.pdf  American\_Letter\_EnviroCEOs\_05.11.11 final.pdf



## NEWS RELEASE

### Contact:

Tony Kreindler, 202-445-8108, [tkreindler@edf.org](mailto:tkreindler@edf.org)

Jennifer Andreassen, 202-572-3387, [jandreassen@edf.org](mailto:jandreassen@edf.org)

### **Environmental Groups Highlight “Greenwashing” by American, United, Continental Airlines**

*Companies Fight Pollution Reductions While Claiming to be Environmentally Responsible*

(Washington – May 11, 2011) Major environmental groups sharply criticized American Airlines (NYSE:AMR), United (NYSE:UAL) and Continental Airlines (NYSE:UAL) today for the airlines’ efforts to gut anti-pollution programs while simultaneously bragging about their environmental performance.

Six major environmental groups sent letters today to the CEOs of [American Airlines](#) and [United](#) (which has recently merged with Continental Airlines), denouncing the airlines for bringing suit in a European court to block a law that holds all airlines accountable for their global warming pollution from flights to, from and within Europe. The law takes effect Jan. 1, 2012. American and United have also been lobbying the U.S. Congress to declare the EU law invalid.

Both American Airlines and United promoted their environmental initiatives around Earth Day last month, with American publishing an article, “AA Reduces Environmental Footprint”, in its in-flight magazine *American Way*, and United promoting itself as an “environmentally friendly company” in its new, widely publicized “eco-skies” campaign.

The letter notes that if American and United are committed to reducing their environmental impact and protecting the earth, “it makes no sense to spend [their] customers’ money on lawyers and lobbyists in an effort to thwart a crucial anti-pollution program.” The environmental groups urged the airlines to drop the lawsuit, saying “Innovation, not obstruction, is what’s needed now... [J]oin the future of low-carbon aviation by making your actions consistent with your words.”

The letters were signed by the CEOs of [Environmental Defense Fund](#) (EDF), Center for Biological Diversity (CBD), Earthjustice, Environment America, Natural Resources Defense Council, and Sierra Club. EDF, CBD and Earthjustice have intervened in the litigation, in which oral argument is expected in Fall 2011.

EDF also today submitted advertisements to [American Airlines' American Way](#) and [United/Continental's Hemispheres](#) in-flight magazines, calling on the airlines to “start flying cleaner” and to stop “dragging their wings”. EDF requested that the airlines respond within a week indicating whether the ads will be accepted for publication.

###

**Environmental Defense Fund** ([edf.org](http://edf.org)), a leading national nonprofit organization, creates transformational solutions to the most serious environmental problems. EDF links science, economics, law and innovative private-sector partnerships. See [twitter.com/EnvDefenseFund](https://twitter.com/EnvDefenseFund); [facebook.com/EnvDefenseFund](https://facebook.com/EnvDefenseFund); [edf.org/ClimateTalks](http://edf.org/ClimateTalks)

Center for Biological Diversity • Earthjustice • Environment America •  
Environmental Defense Fund • Natural Resources Defense Council • Sierra Club

May 11, 2011

Mr. Jeffery A. Smisek  
President and CEO  
United Continental Holdings, Inc.  
77 W. Wacker Drive  
Chicago, Illinois 60601

Via Fax: 713-324-2087

Dear Mr. Smisek:

While we welcome the sentiments in United Continental Holdings' new Eco-Skies ad campaign – "Admiring the earth from 30,000 feet and working to protect it" – it's troubling that your company is actively working to undercut a crucial initiative for achieving such protections.

Eco-Skies says that "At United Continental Holdings, we are committed to leading commercial aviation as an environmentally responsible company by taking actions today that shape an environmentally sustainable future, while continuing to comply with applicable laws and regulations." Yet your company is suing in the European Court of Justice to block a new European law that holds all airlines accountable for their global warming pollution resulting from flights to, from and within the European Union. And your company is lobbying the U.S. Congress to declare the EU law invalid.

If in fact United Continental Holdings is committed to protecting the earth, it makes no sense to spend your customers' money on lawyers and lobbyists in an effort to thwart a crucial anti-pollution program. The European Union deserves kudos, not lawsuits, for acting to reduce airline pollution – particularly given that the international community has proven incapable of doing so despite more than a dozen years of negotiations.

Other airlines – including other legacy carriers as well as business-jet and low-cost carriers – are moving to comply with the EU law. Innovation, not obstruction, is what's needed now. We urge you to drop the lawsuit, and join the future of low-carbon aviation by making your actions consistent with your words.

Sincerely,

Kierán Suckling, Executive Director  
Center for Biological Diversity

Trip Van Noppen, President  
Earthjustice

Margie Alt, Executive Director  
Environment America

Fred Krupp, President  
Environmental Defense Fund

Frances Beinecke, President  
Natural Resources Defense Council

Michael Brune, Executive Director  
Sierra Club

Center for Biological Diversity • Earthjustice • Environment America •  
Environmental Defense Fund • Natural Resources Defense Council • Sierra Club

May 11, 2011

Mr. Gerard J. Arpey  
Chairman and CEO  
American Airlines and AMR Corporation  
4333 Amon Carter Boulevard  
Fort Worth, Texas 76155

Via Fax: 817-967-9641

Dear Mr. Arpey:

While we welcome the sentiments in your recent article headlined “AA Reduces Environmental Footprint” (*American Way*, April 1, 2011), it’s troubling that your company is actively working to undercut a crucial initiative for achieving such results.

The article states, “American Airlines is committed to identifying and implementing programs to reduce our environmental impact” and goes on to say that “our greatest environmental impact is the use of jet fuel.” Yet your company is suing in the European Court of Justice to block a new European law that holds all airlines accountable for their global warming pollution resulting from flights to, from and within the European Union. And your company is lobbying the U.S. Congress to declare the EU law invalid.

If in fact American Airlines is committed to reducing its environmental impact, it makes no sense to spend your customers’ money on lawyers and lobbyists in an effort to thwart a crucial anti-pollution program. The European Union deserves kudos, not lawsuits, for acting to reduce airline pollution – particularly given that the international community has proven incapable of doing so despite more than a dozen years of negotiations.

Other airlines – including other legacy carriers as well as business-jet and low-cost carriers – are moving to comply with the EU law. Innovation, not obstruction, is what’s needed now. We urge you to drop the lawsuit, and join the future of low-carbon aviation by making your actions consistent with your words.

Sincerely,

Kierán Suckling, Executive Director  
Center for Biological Diversity

Trip Van Noppen, President  
Earthjustice

Margie Alt, Executive Director  
Environment America

Fred Krupp, President  
Environmental Defense Fund

Frances Beinecke, President  
Natural Resources Defense Council

Michael Brune, Executive Director  
Sierra Club

Jan  
Cortelyou-Lee/RTP/USEPA/US

04/13/2011 11:02 AM

To: Joseph Goffman

cc

bcc

Subject: Fw: Fincher/Noem Dear Colleague on farm dust

Joe - I wanted to be sure you knew we (Lydia and Bill Harnett) plan to talk with Waxman's staff (Christa and Melissa) this afternoon about PM10 per OCIR's request.. At the bottom of this message is the piece from the Sierra Club that got them interested and the Fincher/Noem position referenced in the Sierra Club letter.

Jan Cortelyou-Lee  
United States Environmental Protection Agency  
Office of Air Quality Planning and Standards  
MD-C404-03  
109 TW Alexander Drive  
Research Triangle Park, NC 27709  
phone: 919-541-5393  
FAX: 919-541-2464

----- Forwarded by Jan Cortelyou-Lee/RTP/USEPA/US on 04/13/2011 10:57 AM -----

From: Jan Cortelyou-Lee/RTP/USEPA/US  
To: Lydia Wegman/RTP/USEPA/US@EPA, Bill Harnett/RTP/USEPA/US@EPA, Jeffrey Clark/RTP/USEPA/US@EPA  
Date: 04/11/2011 04:59 PM  
Subject: Fw: Fincher/Noem Dear Colleague on farm dust

---

Scroll down to the Sierra Club letter that got Waxman's staff interested in learning more about PM10.

Here is a press release from Fincher and Noem on the issue.

## Fincher, Noem Call On EPA To Abandon Unreasonable Standards

Mar 30, 2011 Issues: Congressional Issues

For Immediate Release: March 29, 2011

Contact:

### Fincher, Noem Call On EPA To Abandon Unreasonable Dust Standards *EPA Attempts To Ban Dust In Agriculture Communities*

**WASHINGTON** – U.S. Representatives Stephen Fincher (R-TN), Kristi Noem (R-SD) and 99 additional colleagues today called on the Environmental Protection Agency (EPA) Administrator Lisa Jackson, asking that the EPA refrain from adopting a new, harsh dust standard. Reps. Fincher and Noem argue that implementing this harsh dust standard could “decrease the ability of the United States to meet the world’s food needs as well as decrease productivity, increase food prices, and incur job losses.”

Fincher said: “The EPA is completely out of touch. Dust is part of rural America – it is absolutely unreasonable

communities for carrying out activities essential to their well-being. This is a prime example of federal regulation. In economic times, our nation's agriculture community simply cannot afford another harsh and overreaching EPA standard. I focus on ways to create jobs in Tennessee and across the country and I fear this new dust standard will only slow economic growth in rural areas."

Noem said: "As an experienced farmer and rancher I know there is already enough uncertainty in agriculture. The real need is the EPA reaching even further into their operation by enacting new dust standards. Rural South Dakota farmers have been producing farm dust for generations. The EPA should drop any plans they have for further regulation and instead focus on job creation and entrepreneurship."

Jan Cortelyou-Lee  
United States Environmental Protection Agency  
Office of Air Quality Planning and Standards  
MD-C404-03  
109 TW Alexander Drive  
Research Triangle Park, NC 27709  
phone: 919-541-5393  
FAX: 919-541-2464

----- Forwarded by Jan Cortelyou-Lee/RTP/USEPA/US on 04/11/2011 04:53 PM -----

From: Diann Frantz/DC/USEPA/US  
To: Jan Cortelyou-Lee/RTP/USEPA/US@EPA  
Date: 04/11/2011 03:13 PM  
Subject: Fw: Fincher/Noem Dear Colleague on farm dust

---

----- Forwarded by Diann Frantz/DC/USEPA/US on 04/11/2011 03:13 PM -----

From: Laura Vaught/DC/USEPA/US  
To: Diann Frantz/DC/USEPA/US@EPA  
Date: 04/11/2011 03:12 PM  
Subject: Fw: Fincher/Noem Dear Colleague on farm dust

---

So - here's the Sierra Club assertions on PM - this is what Melissa wants more info on in the farm dust call with Christa and Melissa.

Dear Representative:

The Dear Colleague letter that Representatives Fincher and Noem circulated concerning the EPA's standard for PM<sub>10</sub> fosters the myth that the EPA is developing a standard to regulate farm dust. The EPA is not about to regulate farm dust, and it is not considering a stronger PM<sub>10</sub> standard. Sierra Club urges you not to support this letter, which seeks to undermine the EPA's mandate to protect public health.

The EPA is in the process of reevaluating the National Ambient Air Quality Standard (NAAQS)

for particulate matter, as required under the Clean Air Act.  $PM_{10}$  particles can consist of smoke, soot, salts, acids, metals and dust. Studies have shown that  $PM_{10}$  particles can increase the number and severity of asthma attacks; cause or aggravate bronchitis and other lung diseases; and reduce the body's ability to fight infections. There are also studies documenting that  $PM_{10}$  exposure can lead to premature death of people who already have heart and lung disease, especially in the elderly.

The Dear Colleague letter from Representatives Fincher and Noem states that the EPA is considering changing the current  $PM_{10}$  standard of  $150 \mu\text{g}/\text{m}^3$  set in 1987, to a standard between  $85 \mu\text{g}/\text{m}^3$  and  $65/\mu\text{m}^3$ . Importantly, it neglects to mention that, in conjunction with that change, the EPA is recommending moving from a 99<sup>th</sup> percentile to a 98<sup>th</sup> percentile form of the standard. In plain English, this change would excuse more bad air days from compliance determinations and effectively relax the standard. The upper bound of  $85 \mu\text{g}/\text{m}^3$ , 98<sup>th</sup> percentile, could protect a smaller fraction of the U.S. population than the current standard.

Dust from roads, fields and construction sites is not the only source of  $PM_{10}$ . Other sources include mining and metals processing and other heavy industry sectors; coal-fired power plants; dust from construction sites and landfills; motor vehicles; waste burning; and wood stoves and fireplaces.

As a result, state and local agencies will have many options for controlling  $PM_{10}$  as they develop State Implementation Plans. Pollution controls for industrial facilities and power plants, and landscaping and fences to control dust from landfills and construction sites are among strategies that states may select. Given these many options, it seems very unlikely that states will seek to control windblown dust from farm fields.

The EPA should follow the best science to set  $PM_{10}$  standards at a level that will protect health with a margin of safety, just as the Clean Air Act requires. We respectfully urge Senators not to support a letter that both ignores the health effects of  $PM_{10}$  and misleadingly suggests that the EPA is poised to force farmers to control dust on their fields.

Ed Hopkins  
Sierra Club  
408 C Street, NE  
Washington DC 20002  
202-675-7908 phone  
202-547-6009 fax  
ed.hopkins@sierraclub.org

Justin Cohen/DC/USEPA/US  
12/26/2012 05:08 PM

To: Nancy Ketcham-Colwill  
cc  
bcc  
Subject: nnto: Thanks for the heads-up! Re: Fw: ALA report coming out tomorrow "The Healthy Air Agenda"

Justin Cohen  
U.S. Environmental Protection Agency  
Office of Transportation and Air Quality  
phone: (202) 564-1643  
fax: (202) 564-1686

Nancy Ketcham-Colwill    Spreading the love -- there are a few OTAQ...    12/26/2012 04:51:45 PM

From: Nancy Ketcham-Colwill/DC/USEPA/US  
To: "Justin Cohen" <Cohen.Justin@epamail.epa.gov>  
Date: 12/26/2012 04:51 PM  
Subject: Fw: ALA report coming out tomorrow "The Healthy Air Agenda"

[REDACTED]  
John Millett

----- Original Message -----

**From:** John Millett  
**Sent:** 12/26/2012 04:42 PM EST  
**To:** Gina McCarthy; Don Zinger; Nancy Ketcham-Colwill; Joseph Goffman  
**Subject:** Fw: ALA report coming out tomorrow "The Healthy Air Agenda"

[REDACTED]  
John Millett  
EPA Office of Air and Radiation Communications  
Desk: 202/564-2903  
Cell: 202/510-1822  
Alison Davis

----- Original Message -----

**From:** Alison Davis  
**Sent:** 12/26/2012 03:48 PM EST  
**To:** Nate McMichael  
**Cc:** John Millett  
**Subject:** Fw: ALA report coming out tomorrow "The Healthy Air Agenda"

[REDACTED] -- AD

-----  
Alison Davis  
Sr. Advisor for Public Affairs  
US EPA, Office of Air Quality Planning & Standards  
Research Triangle Park, NC 27711  
tel. 919-541-7587  
mobile: 919-624-0872

Mike,

Harnett flagged this one for us

Tomorrow, ALA is going to issue a report titled, "Protect the Air We Breathe: the Healthy Air Agenda." I've given it a quick scan, and most of what the report calls on the Agency to do comes out of OAQPS. Report attached at the end of this note.

In the report, ALA calls on EPA to:

- Finalize the carbon pollution standards in April
- Issue final MATS reconsideration by March
- Require BART on all coal-fired power plants and other major sources subject to the 1999 regional haze rule by the end of 2013, and asks that EPA re-establish source-specific BART requirements in all states covered by CSAPR. The report also notes that the court decision in CSAPR puts millions of Americans at risk, but does not call on the agency to take any specific action
- Clean up methane pollution from leaks and venting at new and existing oil and gas sources.
- Update the wood heater NSPS that includes rules for outdoor wood boilers
- Propose a tight ozone standard. ALA says the administration's decision not to take final action on the ozone reconsideration is "violating the Clean Air Act by not setting a standard that adequately protects public health" and notes that the current schedule calls for a proposal in December 2013)
- Strengthen implementation of the SO<sub>2</sub> standard and rely on a modeling approach since there is no money for monitors
- Expand the monitoring network to include a comprehensive near-road network in areas near major roads and highways
- (OTAQ) set new standards to reduce sulfur in gasoline and set tighter emissions limits for passenger vehicles;
- Clean up dirty diesel engines - both mobile and stationary -- and notes that ALA opposes the proposed changes to RICE that would allow back-up generators to provide electricity to the grid.

The report also calls on:

- Congress to increase federal funding for grants for state and local air pollution work
- The administration to protect funding for EPA programs

- The agency to strengthen enforcement and speed it up
- The agency to ensure development of measures to reduce emission from alternative/renewable energy sources

[attachment "American Lung Association Healthy Air Agenda FINAL.pdf" deleted by Justin Cohen/DC/USEPA/US]

-----  
Alison Davis  
Sr. Advisor for Public Affairs  
US EPA, Office of Air Quality Planning & Standards  
Research Triangle Park, NC 27711  
tel. 919-541-7587  
mobile: 919-624-0872

Larke Williams/DC/USEPA/US

To: Nancy Ketcham-Colwill

01/11/2013 05:42 PM

cc: Daniel Hopkins

bcc:

Subject: Fw: Appeal due to overdue FOIA case HQ-FOI-01058-12

Hi Nancy,

Here is another distinct FOIA request.

Cheers,

Larke Williams

Special Assistant to the Assistant Administrator

Office of Air and Radiation

US Environmental Protection Agency

Phone: 202-564-2618

Cell: 202-713-8429

----- Forwarded by Larke Williams/DC/USEPA/US on 01/11/2013 05:41 PM -----

From: Sharon Cooperstein/DC/USEPA/US

To: OAR Special Assistants

Date: 01/09/2013 05:08 PM

Subject: Fw: Appeal due to overdue FOIA case HQ-FOI-01058-12

---

Sharon Cooperstein

U.S. Environmental Protection Agency

Office of the Administrator/Office of Policy/Office of Regulatory Policy & Management

1200 Pennsylvania Ave., NW (Mailcode 1803)

Washington, DC 20460

(202) 564-7051

----- Forwarded by Sharon Cooperstein/DC/USEPA/US on 01/09/2013 05:08 PM -----

From: Sabrina Hamilton/DC/USEPA/US

To: OAR Special Assistants

Cc: Amit Srivastava/DC/USEPA/US@EPA, Sharon Cooperstein/DC/USEPA/US@EPA

Date: 07/30/2012 10:07 AM

Subject: Fw: Appeal due to overdue FOIA case HQ-FOI-01058-12

Amit,

This is the FOIA asking for emails or letters between Gina and American Lung Association. See my email to Kirsten below. Thanks,

Sabrina

Sabrina Hamilton

Air and Radiation Liaison Specialist

Office of Air and Radiation - Correspondence Unit

U.S. Environmental Protection Agency (EPA)

1200 Pennsylvania Avenue, N.W. (6101-A)

Washington, D.C. 20460

Tel: (202) 564-1083

Fax: (202) 501-0600

----- Forwarded by Sabrina Hamilton/DC/USEPA/US on 07/30/2012 10:03 AM -----

From: Sabrina Hamilton/DC/USEPA/US  
To: OAR Special Assistants  
Date: 07/18/2012 11:11 AM  
Subject: Fw: Appeal due to overdue FOIA case HQ-FOI-01058-12

---

What is the status of this request? We need to provide responsive documents ASAP. Thanks,

Sabrina

Sabrina Hamilton  
Air and Radiation Liaison Specialist  
Office of Air and Radiation - Correspondence Unit  
U.S. Environmental Protection Agency (EPA)  
1200 Pennsylvania Avenue, N.W. (6101-A)  
Washington, D.C. 20460  
Tel: (202) 564-1083  
Fax: (202) 501-0600

----- Forwarded by Sabrina Hamilton/DC/USEPA/US on 07/18/2012 11:08 AM -----

From: Vivian Warden/DC/USEPA/US@EPA  
To: Sabrina Hamilton/DC/USEPA/US@EPA, Gloria Hammond/DC/USEPA/US@EPA  
Date: 07/18/2012 10:43 AM  
Subject: Appeal due to overdue FOIA case HQ-FOI-01058-12

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Request for Documents for Case # 'HQ-APP-00153-12'. Due date: July 27, 2012. Basis of Appeal.tif 



New Appeal Control Sheet.doc DGC Appeal Instructions.doc

----- Forwarded by Sabrina Hamilton/DC/USEPA/US on 07/18/2012 11:09 AM -----

From: Sabrina Hamilton/DC/USEPA/US  
To: OAR Special Assistants  
Cc: Gloria Hammond/DC/USEPA/US@EPA  
Date: 04/06/2012 11:17 AM  
Subject: Fw: Case Assignment (HQ-FOI-01058-12)

---

Kirsten,

The attached FOIA is being assigned to you for action since it is asking for emails from or to Gina from the American Lung Association. The Office of the Administrator has the lead on this assignment, however, OAR must provide our responsive records. [REDACTED]

[REDACTED] I also need for you to complete the attached FOIA Cost Worksheet to submit with the responsive records.

I'll be back in the office on Tuesday. Let me know if you have any questions. Thanks,

Sabrina



Request Description HQ-FOI-01058-12.tif FOIA Cost Worksheet.doc

Sabrina Hamilton  
Air and Radiation Liaison Specialist  
Office of Air and Radiation - Correspondence Unit  
U.S. Environmental Protection Agency (EPA)  
1200 Pennsylvania Avenue, N.W. (6101-A)  
Washington, D.C. 20460  
Tel: (202) 564-1083  
Fax: (202) 501-0600

----- Forwarded by Sabrina Hamilton/DC/USEPA/US on 04/06/2012 11:09 AM -----

From: Vivian Warden/DC/USEPA/US@EPA  
To: Gloria Hammond/DC/USEPA/US@EPA, Rory Boyd/DC/USEPA/US@EPA, Sabrina Hamilton/DC/USEPA/US@EPA, NancyE Morley/DC/USEPA/US@EPA, Jonathan Newton/DC/USEPA/US@EPA, NancyT Brown/DC/USEPA/US@EPA, Candace White/DC/USEPA/US@EPA  
Date: 04/03/2012 04:52 PM  
Subject: Case Assignment (HQ-FOI-01058-12)

---

Details: Request Type : FOIA Requested By : Horner, Chris Requested Date : 04/02/2012  
Primary User : Newton, Jonathan Comments:

**FREEDOM OF INFORMATION ACT APPEAL  
HQ-APP-00153-12**

**APPELLANT:** Christopher Horner

**Appeal Date:** July 11, 2012

**COMPANY:** Environ. Law Ctr. at American Tradition Institute

**Received Date:** July 12, 2012

**Subject:** Appeal due to non response/overdue request to FOIA request case HQ-FOI-01058-12

**Due Date:** August 13, 2012

**ASSIGNMENTS:**

OGC

**SPECIAL INSTRUCTIONS:**

**Copy to AO FOIA Coordinator, Jonathan Newton, via “Request for Documents” within FOIAXpress on 07/16/12.**

FS: vw

**FREEDOM OF INFORMATION ACT APPEAL  
HQ-APP-00153-12**

**APPELLANT:** Christopher Horner

**Appeal Date:** July 11, 2012

**COMPANY:** Environ. Law Ctr. at American Tradition Institute

**Received Date:** July 12, 2012

**Subject:** Appeal due to non response/overdue request to FOIA request case HQ-FOI-01058-12

**Due Date:** August 13, 2012

**ASSIGNMENTS:**

OGC

**SPECIAL INSTRUCTIONS:**

**Copy to AO FOIA Coordinator, Jonathan Newton, via “Request for Documents” within FOIAXpress on 07/16/12.**

FS: vw

## **FOIA Appeals**

Information needed by the Office of General Counsel (OGC) to respond to a FOIA Appeal:

- A. Initial FOIA request and any additional correspondence related to scope of request.\*
- B. FOIA response, including any itemized list of withheld records, interim responses or additional correspondence with the requestor.\*
- C. Appeal letter from FOIA requester.\*

### **Appeals of record denials:**

1. All withheld documents.
2. Name, phone number and email of person(s) who are most familiar with the record(s) and the reason(s) for denying release of the record(s).

### **Appeals of a no records response:**

1. Person in the program office who conducted the search and/or who is most familiar with the type of information that the requester is seeking.
2. If known, any other office that may have additional records.

### **Appeals claiming an inadequate Agency search:**

1. Person in the program office who conducted the search and/or who is most familiar with the type of information that the requester is seeking.
2. If known, any other office that may have additional records.

Appeal determinations are to be made within 20 days of agency receipt of the appeal.

Information must be collected and transmitted to OGC as soon as possible after notification of a FOIA Appeal, but no later than 10 days after receipt of the appeal notification. If information cannot be provided within 10 days, notification needs to be provided to OGC about the factors contributing to delay.

The (FOA) request number and (APP) appeal number need to be on any transmittal of information to OGC.

If you have any questions regarding this appeal, please contact Barbara Bruce of OGC at 202.564.5672 / [bruce.barbara@epa.gov](mailto:bruce.barbara@epa.gov)

\* This information should be in FOIA Express, but if not, needs to be provided to OGC along with other necessary information.

**COST WORKSHEET FOR FOIA REQUEST No. HQ-RIN-0**

Fill Out Part 2 EVEN if requester was not billed. Please complete and return to your OFFICE FOIA Coordinator with a copy of FOIA response letter.

1. Use this table to figure **FOIA billable charges** to requester

**Costs:** Clerical Staff - \$4.00/15 minutes  
 Professional Staff - \$7.00/15 minutes  
 Manager=s Time - \$10.25/15 minutes

**Photocopies:** \$.15/page (double-sided \$.30)

**Authentication:** \$25.00

*No Fee Charged for < = \$14.00*

**NEW:** Bills sent between \$14.01-25.00, no payment assurance required

*Written Assurance of payment from requester for amounts >\$25.00, then billed*

| Time         | Amount \$     | Task                                                 |
|--------------|---------------|------------------------------------------------------|
|              |               | Search                                               |
|              |               | Review                                               |
| N/A          |               | # of Photocopies - (\$.15/page - Color Copies Extra) |
|              |               | \$2.25 Cost of Disk/Mailer                           |
|              |               | Computer System Time                                 |
| N/A          |               | Authentication                                       |
| <b>TOTAL</b> | <b>\$0.00</b> |                                                      |

2. Use this table to figure **administrative costs** to Agency.

Administrative cost figured in **one-minute increments** x **employee salary (hourly rate)** - **FOR ALL EMPLOYEES INVOLVED IN RESPONDING TO FOIA. These costs NOT BILLED to requester.**

| Time         | Amount \$ | Task                                                                     |
|--------------|-----------|--------------------------------------------------------------------------|
|              |           | Initially read FOIA                                                      |
|              |           | Search & Review                                                          |
|              |           | Photocopying time/costs (\$.15/page)                                     |
|              |           | Authentication                                                           |
|              |           | Phone call(s) to REQUESTER                                               |
|              |           | Phone calls to FOIA Office, colleagues, attorneys                        |
|              |           | Typing & proofing letter/envelope                                        |
|              |           | Proof & Sign FOIA + ALL Concurrences                                     |
|              |           | Other@ time spent on FOIA                                                |
|              |           | Computer Time/Programming Costs                                          |
|              |           | Maps/Disks/CD ROM, Photos, Etc. Costs                                    |
|              |           | Approx. Mailing/Postage Costs (\$.42 per 4pgs. + \$.23 per add=l. ounce) |
| <b>TOTAL</b> | <b>\$</b> | <b>Preparer's Name/Mail Code:</b>                                        |

**FREEDOM OF INFORMATION ACT APPEAL  
HQ-APP-00153-12**

**APPELLANT:** Christopher Horner

**Appeal Date:** July 11, 2012

**COMPANY:** Environ. Law Ctr. at American Tradition Institute

**Received Date:** July 12, 2012

**Subject:** Appeal due to non response/overdue request to FOIA request case HQ-FOI-01058-12

**Due Date:** August 13, 2012

**ASSIGNMENTS:**

OGC

**SPECIAL INSTRUCTIONS:**

**Copy to AO FOIA Coordinator, Jonathan Newton, via "Request for Documents" within FOLAXpress on 07/16/12.**

FS: vw



Re: APPEAL OF DENIAL OF FOIA REQUESTS -- HQ-FOI-01052-12, HQ-FOI-01058-12

chornerlaw  
to:  
FOIA HQ  
07/11/2012 05:45 PM  
Hide Details  
From: chornerlaw@aol.com

To: FOIA HQ@EPA

RECEIVED  
JUL 11 2012  
HQ-APP-00153-12

Dear EPA,

I noticed after the fact an amusing typo.

Please do not HESITATE TO contact me...

Yours,  
Chris Horner

-----Original Message-----

From: chornerlaw <chornerlaw@aol.com>

To: hq.foia <hq.foia@epa.gov>

Sent: Wed, Jul 11, 2012 5:17 pm

Subject: APPEAL OF DENIAL OF FOIA REQUESTS -- HQ-FOI-01052-12, HQ-FOI-01058-12

Dear EPA FOIA Appeals Office,

Please see the Appeal of EPA's denial of ATI's requests under the Freedom of Information Act Nos. HQ-FOI-01052-12, HQ-FOI-01058-12, original Requests, and affidavit attached. The Appeal is attached in Word created on Mac, in the event there are formatting issues.

Please do not contact me if you have any questions.

Best,

Christopher C. Horner  
American Tradition Institute  
202.262.4458



APPEAL OF DENIAL OF FOIA REQUESTS -- HQ-FOI-01052-12, HQ-FOI-01058-12

chornerlaw

to:

FOIA HQ

07/11/2012 05:19 PM

Hide Details

From: chornerlaw@aol.com

To: FOIA HQ@EPA

RECEIVED  
JUL 11 2012  
HQ-APP-00153-12

3 Attachments



ATI EPA ALA Sierra Denial Appeal.doc ATI Sierra ALA Appeal Exs 1 and 2.pdf ATI Sierra ALA Appeal Ex 3.pdf

Dear EPA FOIA Appeals Office,

Please see the Appeal of EPA's denial of ATI's requests under the Freedom of Information Act Nos. HQ-FOI-01052-12, HQ-FOI-01058-12, original Requests, and affidavit attached. The Appeal is attached in Word created on Mac, in the event there are formatting issues.

Please do not contact me if you have any questions.

Best,

Christopher C. Horner  
American Tradition Institute  
202.262.4458



Environmental Law Center  
American Tradition Institute

## APPEAL UNDER THE FREEDOM OF INFORMATION ACT

July 11, 2012

National Freedom of Information Office  
U.S. EPA  
FOIA and Privacy Branch  
1200 Pennsylvania Avenue, N.W. (2822T)  
Washington, DC 20460

RECEIVED  
JUL 12 2012  
HQ-FOI-00153-12

APPEAL OF DENIAL OF FOIA REQUESTS -- HQ-FOI-01052-12 HQ-FOI-01058-12

By Electronic Mail to [hq.foia@epa.gov](mailto:hq.foia@epa.gov)

On behalf of the American Tradition Institute (ATI) I write to appeal EPA's communication by telephone ("adverse determination") of the means and result of its election to not respond to two Requests by ATI under the Freedom of Information Act (FOIA), both dated April 2, 2012, for records to, from, citing or referring to two different environmental pressure groups, the Sierra Club (Sierra) and the American Lung Association (ALA) (respectively, FOIA Request Nos. HQ-FOI-01052-12, HQ-FOI-01058-12; Ex.s 1 and 2, attached). Alternately, we appeal EPA's failure to timely respond and to thereby constructively deny those Requests.

We appeal for the following reasons. We appeal the Requests together as we are informed by EPA that they are being treated together as a deliberate decision, as described below.

**I.**  
**JURISDICTIONAL STATEMENT**

The underlying FOIA request was properly filed under 5 U.S.C. § 552 (2010 West).<sup>1</sup> Pursuant to 40 C.F.R. § 2.104, you have jurisdiction because “If [requesting parties] are dissatisfied with any adverse determination of your request by an office, [they] may appeal that determination to the Headquarters Freedom of Information Staff”, or “If EPA fails to respond to [a] request within the 20 working day period, or any authorized extension of time,” provided certain procedural requirements are met (see below).

The EPA initial, adverse determinations were by telephone on July 5, 2012, when its assigned FOIA specialist communicated to ATI the process by which EPA chose to remove these Requests from the normal procedure for handling FOIA requests, instructing the FOIA specialists initially assigned to them to provide no further communication or written determination to ATI on the matter.

If EPA elects to cite its acknowledgement letter(s), which provided no substantive response such as an initial determination or ruling on ATI’s request for fee waiver, in order to claim it did initially respond to our Requests and toward foreclosing our ability to “seek judicial review to obtain the records without first making an administrative appeal” (40 C.F.R. § 2.104(a)), then we note that EPA’s failure to provide the required substantive response or written initial determination nonetheless places this matter before your jurisdiction.

Further, all procedural rules have been complied with as this is: (1) in writing, (2) properly addressed, (3) clearly identified as an “Appeal Under the Freedom of Information Act”

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<sup>1</sup> Unless otherwise indicated all citations to the United States Code, Code of Federal Regulations, and Federal Registrar are to the 2010 West versions.

and includes a copy of the underlying Request (Ex.s 1-2), (4) sets forth grounds for reversal, and (5) was filed within 30 days of July 5, 2012, which is the date of EPA communicated its adverse determination to us.

## II. PROCEEDINGS BELOW

This appeal involves two FOIA Requests, sent by electronic mail to EPA's FOIA office at [hq.foia@epa.gov](mailto:hq.foia@epa.gov), and seeking described records from five specified offices at EPA HQ,<sup>2</sup> which records, respectively, were:

“copies of any email sent from or to (including as cc:) the Offices identified above and containing the word ‘Sierra’ in either the body, subject line or any domain name in the email...dated, sent or received by the identified EPA HQ offices between January 21, 2009 and the date EPA performs the relevant, respective search(es) in response to this Request, inclusive”;

and

“copies of any email sent from or to (including as cc:)...from or to (including as cc:) anyone with ‘Lung’ in their e-mail domain (this includes but is not limited to ‘Lung.org’ or ‘LungUSA.org’ [and/or] referencing the group American Lung Association (or ‘ALA’)... dated, sent or received by the identified EPA HQ offices between January 21, 2009 and the date EPA performs the relevant, respective search(es) in response to this Request, inclusive”.

EPA acknowledged these two requests by letters dated April 2 and April 3, respectively.

Approximately one week after sending these requests the undersigned received a telephone call from a man identifying himself as being a FOIA officer with EPA, asking that we narrow the “Sierra” Request, FOIA No. HQ-FOI-01052-12. His position was that there are many people named “Sierra” and that if I rephrased the search parameter to Sierra Club it would expedite handling. The actual search parameters indicate such a narrowing is not necessary even

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<sup>2</sup> These are the Offices of Associate Administrator for Policy, Associate Administrator for External Affairs and Environmental Education, Associate Administrator for Air and Radiation, the Deputy Administrator, and/or the Assistant Administrator for Air and Radiation.

given that fact, however, as we specify if the word “Sierra” appears in the *domain name* (e.g., @Sierra.org). Further, given that Sierra Club is commonly referred to among relevant professionals or communities simply as “Sierra”, and that searching for “Sierra Club” would inappropriately limit the search to exclude many responsive records, we concluded the call reaffirming that this Request sought records using “Sierra” as described, referencing Sierra Club.

After this telephone call, however, EPA provided no further response. EPA did not seek an extension or otherwise notify ATI of reasons it must delay responding to ATI. EPA provided no responsive records and is improperly withholding responsive information through selective and uneven application, and therefore misapplication, of FOIA.

Further, EPA affirmatively took steps to remove the Requests from the normal handling procedure, ensuring the assigned FOIA specialists would correspond no further with ATI or otherwise take further on the matters, as described below and attested to in the attached affidavit of the undersigned (Ex. 3).

ATI is informed by EPA that, instead of communicating further with ATI or otherwise fulfilling its statutory responsibilities, a senior EPA official, the FOIA specialists’ supervisor Larry F. Gottesman<sup>3</sup> instructed the assigned FOIA specialists to hold off on further action after the acknowledgement letter was sent to ATI as he would handle further responses, including sending the initial determination on the fee waiver. ATI spoke to one of the specialists on July 5, 2012, and were informed Mr. Gottesman had informed the FOIA specialists, after they had been assigned the Requests, that he would take over and correspond with us; we were also informed on this occasion that he would call us the next day. He has in fact never contacted us after the April 2-3, 2012 acknowledgement letters. This official has instead (in the colloquial vernacular,

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<sup>3</sup> Mr. Gottesman is “the U.S. Environmental Protection Agency’s (EPA’s) Freedom of Information Officer,” a senior position entailing, e.g., testimony to Congress on Agency fulfillment of its statutory duties under FOIA, See, e.g., [http://epa.gov/ocir/hearings/testimony/111\\_2009\\_2010/2010\\_0318\\_ifg.pdf](http://epa.gov/ocir/hearings/testimony/111_2009_2010/2010_0318_ifg.pdf).

or bureaucratic sense) sat on the requests, after affirmatively removing the assigned specialists from the process.

When one of the assigned FOIA specialists looked into this inaction at ATI's request, she explained this history as reflected in her file and in her memory, expressed surprise that the promised followup had occurred, and stated that the lack of promised action troubled her "because this is [her] file". See attached Affidavit (Ex. 3).

### **III.**

#### **EPA Has Denied ATI's Requests**

##### **A. EPA Has Provided an Adverse Determination Denying ATI's Requests**

The above reflects that, in explaining how and why EPA had not further communicated with ATI, by telephone on July 5, 2012, through a formally assigned EPA FOIA specialist EPA informed ATI of the specifics of EPA's determination of how it would process or, more accurately, not process these Requests. This communication by EPA constitutes an adverse determination.

##### **B. EPA Has Constructively Denied ATI's Requests**

Alternately, EPA's behavior represents constructive denial. EPA's approach to these Requests singled out by the FOIA specialists' supervisor -- of "responding" (i.e., acknowledgement letter) but ensuring no substantive response creating a clear appellate path (e.g., an express initial determination or ruling on a fee waiver) -- is the means by which agencies can most aggressively impose further delays to frustrate requests (which also increases agency litigation costs, harms

judicial economy, and unfairly penalizes requesters seeking a timely response). This approach can create and may even be intended to create<sup>4</sup> an arguable gray area ensuring further delay.

Indeed, this practice of placing a request in suspense by “responding” by only acknowledging the request but not providing an express determination has been singled out in third-party analyses, for example by the George Washington University's National Security Archive, as one of the practices that “make it extremely likely that the average member of the public will be frustrated, discouraged and ultimately unsuccessful in obtaining access to federal government records.” (The National Security Archive Freedom of Information Act Audit, Phase One presented March 14, 2003,

<http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB84/findingsadmin.htm>). Specifically, “The Archive was consistently told that filing an administrative appeal due to an agency's lack of response would slow the processing of a request. The Archive was told that an appeal processed without an actual denial necessitated the involvement of another level of administration, frequently the Office of General Counsel, and would generate gratuitous paperwork that would ultimately slow processing.” (Ibid.)

We note that a timely agency response that is nonetheless inadequate for failing to address the merits of the request can also be litigated immediately. As Judicial Watch describes it, “A response that fails to address the request or the fee waiver or to advise the requester of his or her FOIA rights, is not considered to be a substantive response under FOIA.” (Freedom of Information Act and Open Records Law Handbook, Judicial Watch, Inc., p. 21,

<http://www.judicialwatch.org/archive/FOIAHandbook.pdf>.)

<sup>4</sup> We also note that EPA's official who asserted continuing responsibility for our Requests at issue in this Appeal is undoubtedly aware that this approach, by delaying even an affirmative determination on our request for fee waiver manages and forcing our Appeal of that refusal to further delay action on these Requests, which we suspect are viewed as potentially embarrassing to the Agency. See, e.g., 40 C.F.R. Part 2.107, “When a fee waiver request is denied, EPA will do no further work on the request until it receives an assurance of payment or an appeal of the fee waiver adverse determination is made and a final appeal determination is made pursuant to Sec. 2.104(j).”

Regardless of the intent behind this facially troubling series of events, as we note Judicial Watch also describes in its FOIA Handbook, “An inadequate response is a response in which the agency, in the form of a letter, does not fulfill the agency’s required action under FOIA. Common examples of inadequate responses are the failure to respond with a written letter within 20 business days or a letter acknowledging receipt of the letter, but completely devoid of any details regarding the determination of the request, the fee waiver or of expedited processing.” (Ibid).

Similarly, “A requester who has received a timely, but inadequate response, has the option of waiting longer for a more adequate response, following up with a letter or phone call requesting an update, or commencing with the filing of a lawsuit.” (Ibid). We note that by following up by telephone, and then seeking an official administrative appeal, we establish our prudence and good faith as well as having established the unsettling specifics of EPA’s actions.

Whether EPA chooses to call this gray area it has affirmatively occupied an adverse determination or inadequate response, EPA is nonetheless denying ATI access to the requested records and violating its statutory obligations.

If EPA chooses to assert that it has not provided a substantive response to ATI’s Requests at issue in this Appeal, the Agency must agree that ATI has exhausted its administrative remedies, precluding the Agency from invoking that defense should ATI be forced to seek judicial protection of its appellate rights.

What EPA cannot be permitted to do in this case is have things both ways. On Appeal of these actions it must either acknowledge the adverse determination communicated by telephone on July 5, 2012 as described above and attested to in the attached Affidavit, or that it has not provided the substantive response as required.

The Agency has refused to satisfy its obligations under the Act, and we Appeal this decision/inaction, seeking its reversal.

#### IV.

#### **EPA's Determination To Not Provide Requested Information Should Be Reversed**

##### **A. Standards of Review: All Doubts Must be Resolved in Favor of Disclosure**

It is well-settled that Congress, through FOIA, "sought 'to open agency action to the light of public scrutiny.'" *DOJ v. Reporters Comm. for Freedom of Press*, 498 U.S. 749, 772 (1989) (quoting *Dep't of Air Force v. Rose*, 425 U.S. 353, 372 (1976)). The legislative history is replete with reference to the, "general philosophy of full agency disclosure" that animates the statute. *Rose*, 425 U.S. at 360 (quoting S.Rep. No. 813, 89<sup>th</sup> Cong., 2<sup>nd</sup> Sess., 3 (1965)). Accordingly, when an agency withholds requested documents the burden of proof is placed squarely on the agency, with all doubts resolved in favor of the requester. See, e.g., *Federal Open Mkt. Comm. v. Merrill*, 443 U.S. 340, 352 (1979). This burden applies across scenarios and regardless of whether the agency is claiming an Exemption under FOIA in whole or in part. See, e.g., *Tax Analysts*, 492 U.S. at 142 n. 3; *Consumer Fed'n of America v. Dep't of Agriculture*, 455 F.3d 283, 287 (D.C. Cir. 2006); *Burka*, 87 F.3d at 515.

These disclosure obligations are to be accorded added weight in light of the recent Presidential directive to executive agencies to comply with FOIA to the fullest extent of the law, specifically cited in my request to EPA to produce responsive documents. *Presidential Memorandum For Heads of Executive Departments and Agencies*, 75 F.R. § 4683, 4683 (Jan. 21, 2009). As the President emphasized, "a democracy requires accountability, and accountability requires transparency," and "the Freedom of Information Act . . . is the most prominent expression of a profound national commitment to ensuring open Government." Accordingly, the

President has directed that FOIA “be administered with a clear presumption: In the face of doubt, openness prevails” and that a “presumption of disclosure should be applied to all decisions involving FOIA.”

As regards the two Requests at issue in this Appeal, EPA failed to meet its obligation to provide ATI with the substantive response to its initial request that is required under 5 U.S.C. § 552(6)(A)(i), only providing acknowledgement of the Requests and identification numbers, but affirmatively taking the Requests outside of the normal handling procedures and sitting on them.

**B. EPA’s Refusal to Meet its Obligations is Arbitrary and Capricious**

The Agency’s refusal, particularly but not exclusively as described by EPA’s relevant FOIA specialist to ATI, reflects an arbitrary and capricious manner of handling these two Requests, together, in a manner indicating an Agency official is sitting on them.

EPA may not selectively comply with the Act. The information sought is covered by and subject to release under FOIA. EPA’s handling of these two Requests is on its face arbitrary and capricious.

Relevant to this and our conclusion based on information and belief that EPA is deliberately slow-walking these Requests, we draw particular attention to the President’s instruction that “The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve.” *Presidential Memorandum For Heads of Executive Departments and*

*Agencies*, 75 F.R. § 4683, 4683 (Jan. 21, 2009). The Presidential directive merely reflects EPA's longstanding position on information dissemination and access. EPA regulations reiterate the bias toward release. See also "Practical Tips," [http://www.epa.gov/foia/Processing\\_FOIA\\_Requests.html](http://www.epa.gov/foia/Processing_FOIA_Requests.html).

If specific information particular to the correspondent found in the body of the email rises to that level, then EPA may properly redact it. If it is simply the sort of embarrassing information or conversation reflecting the closeness of correspondent relationships, then of course EPA may not properly do so and that the subject of ATI's Requests may indicate a likelihood of unearthing embarrassing records, this is not sufficient grounds for withholding responsive records.

## V.

### **ATI Disseminates FOIA'd information and is a Press Entity**

ATI requested fee waivers for these two Requests, to which EPA's assigned FOIA specialists never responded on the instruction of Mr. Gottesman. We repeat that ATI is informed by the relevant FOIA specialist that Mr. Gottesman informed the assigned FOIA specialists to hold off on further action as he would act on their recommendation regarding that fee waiver request. (He did not).

EPA has a long-running practice of routinely granting fee waivers for other requests, including to ATI and to the undersigned for requests on behalf of another, similar organization the Competitive Enterprise Institute. Only beginning in the past two months has EPA begun to deny fee waivers, not uniformly but in instances which on their face threatened the Agency with embarrassing disclosures (we refer your office to three recent and related Requests, HQ-FOI-01268-12, HQ-FOI-01269-12, HQ-FOI-01270-12, EPA's response to CEI's appeal of which fee waiver denial is overdue). Up to that point and over more than a decade of the undersigned's

experience with EPA, the Agency's practice is to grant fee waivers and determinations that the release would significantly contribute to the public's understanding of the matter at hand, for far more mundane information than the information of high public interest sought in the two Requests which are subject of this Appeal.

ATI's interest in the documents springs from its efforts to educate the public, scholars, and state and federal regulators on matters of government operations, including environmental issues and as is most relevant in the instant matter, relationships with politically preferred groups including one to which a senior EPA official migrated after coming under scrutiny and negative attention for stating his enforcement approach was akin to ancient Romans "crucify[ing]" random citizens to keep the populace in line. The general and policy-oriented public will benefit from the dissemination of the information requested, since ATI's professionals are widely-published about these subjects.

ATI is also verbally informed by EPA that the considerations of our fee waiver included that the requests were "very broad". ATI notes that breadth is not a proper consideration according to either statute or regulation. See, e.g., "Requesting Fee Waivers", <http://www.epa.gov/foia/waivers.html>.

For purposes of this Appeal we note that ATI has been quote or cited many times in the press, and ATI professionals' op-eds, articles and blogs in the outlets cited in our original Requests are sufficiently frequent in publication to qualify ATI as a press entity because it provides free news and information to the public on a regular basis.

ATI publishes about these and other issues in print and electronic media, as well as newsletters to legislators and other interested parties, and thus as noted qualifies as a press entity for purposes of FOIA. Those activities are in fulfillment of ATI's mission. The information

received will be disseminated through one or more of the following: a) newsletters, (b) opinion pieces in newspapers or magazines, (c) ATI's web site (d) other electronic journals including daily blogs and *newspaper* blogs to which our professionals contribute, (e) local and syndicated radio programs dedicated to discussing public policy, (f) to the extent that Congress or states engaged in relevant oversight or related legislative or judicial activities find that which is received noteworthy, it will become part of the public record on deliberations of the legislative branches of the Federal and State Governments on the relevant issues.

Pursuant to 5 U.S.C. § 552(a)(6)(E) and EPA implementing regulations, e.g., 40 C.F.R. § 2.104(e), **ATI also requests that the Agency expedite the processing of this request** in light of the compelling need for the requested information, and that ATI is a non-profit organization with a robust FOIA practice centrally dedicated to disseminating information it gathers from a variety of sources, including the FOIA, and seeks the information requested in this FOIA request for the express purpose of disseminating it to the public. As with other organizations that courts have found to satisfy the criteria necessary for expedition, ATI “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience.”

Moreover, there is an urgent need for the record sought, since the value of the records will be greatly reduced if the information is not disseminated quickly, and there is *current* public concern about transparency issues and federal government relationships with preferred groups, including particularly environmental pressure groups (see, e.g., media interest in the aforementioned move by former Region 6 administrator Al Armendariz to Sierra Club after his “crucify” remarks surfaced on video).

Finally, since this request is for material which is clearly of benefit to the public, other persons will undoubtedly also request these records. It would be inequitable if the first requester were to bear the full material cost of the initial search.

If our request for a waiver of fees is not substantially granted, we reserve and expect to protect all appellate rights in this matter. As such, we also request an itemization of the charges assessed.

#### V. CONCLUSION

The affirmative or constructive denial of ATI's two Requests at issue in this Appeal should be reversed on the grounds specified above.

Sincerely,

Christopher C. Horner, Esq.

[chris.horner@atinstitute.org](mailto:chris.horner@atinstitute.org)  
202.262.4458 (M)

# **ATI APPEAL EXHIBITS 1-2**



Environmental Law Center  
American Tradition Institute

## REQUEST UNDER THE FREEDOM OF INFORMATION ACT

April 2, 2012

National Freedom of Information Officer  
U.S. EPA, Records, FOIA and Privacy Branch  
1200 Pennsylvania Avenue, NW (2822T)  
**BY ELECTRONIC MAIL.**

By E-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov)

Dear EPA FOIA Officer,

On behalf of the American Tradition Institute (ATI), a non-profit public policy institute, please provide copies of all records meeting the description which follows and which were sent or received by or are in the possession of staff working now or during the period covered by this Request in or for the following five Offices at EPA HQ:

**Office of Associate Administrator for Policy,  
Office of Associate Administrator for External Affairs and Environmental  
Education,  
Office of Associate Administrator for Air and Radiation  
Office of the Deputy Administrator, and/or  
Office of the Assistant Administrator for Air and Radiation**

**Records Sought** – Please provide us copies of any email sent from or to (including as cc:) the Offices identified above and containing the word “Sierra” in either the body, subject line or any domain name in the email.

Documents responsive to this Request will have been dated, sent or received by the identified EPA HQ offices between January 21, 2009 and the date EPA performs the relevant, respective search(es) in response to this Request, inclusive.

### Scope of Request

Please identify and inform us of all responsive or potentially responsive documents within the statutorily prescribed time, and the basis of any claimed exemptions or privilege and to which specific responsive or potentially responsive document(s) such objection applies.

Further, please inform us of the basis of any partial denials or redactions. Specifically, if your office takes the position that any portion of the requested records is exempt from disclosure, we request that you provide us with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1972), with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA" pursuant to *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979), and "describ[ing] each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information." *King v. Department of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987).

In the event that some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable, non-exempt portions of the requested records. See 5 U.S.C. §552(b). If it is your position that a document contains non-exempt segments and that those non-exempt segments are so dispersed throughout the documents as to make segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed through the document. *Mead Data Central v. Department of the Air Force*, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemption in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

**We request you provide copies of responsive records in electronic format if you possess them as such, otherwise photocopies are acceptable.**

Please provide responsive documents in complete form, with any appendices or attachments as the case may be.

#### Request for Fee Waiver

We request your office(s) waive any fees associated with this request. As explained below, this FOIA Request satisfies the factors listed in EPA's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute - that "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).

ATI is a nonprofit, tax-exempt public interest organization, with formal research, educational and publication functions as part of its mission, and release of these records will serve the public interest by contributing significantly to the public's understanding of the controversial topics of energy and environmental policy and specifically the ongoing debate over the transparency and credibility of the federal regulatory process involving a politically favored industry sector, and because such a release is not primarily in our organization's commercial interest.

ATI has no commercial interest in obtaining the requested information. Instead, ATI intends to use the requested information to inform the public, so the public can meaningfully assess claims made by government agencies and participate in the policymaking process related to EPA policy with complete, relevant information. ATI will derive no economic benefit from the requested material. No "specialized use" of the documents is anticipated outside of that described herein.

If our fee waiver request is denied we are willing to pay up to \$150.00, and in the event of any appeal as appropriate and regardless of that outcome or your response to this fee waiver request we request the search and document production proceed in the interim.

ATI has engaged in high-profile efforts promoting the public interest advocating transparency and sensible policies to protect human health and the environment, and has routinely received fee waivers under FOIA.

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.

The requested records relate to EPA's process and advice given it in the course of executing its taxpayer-funded work. Pursuant to FOIA this process, related correspondence, these determinations and the policies and procedures on which they are based are unquestionably "identifiable operations or activities of the government." The Department of Justice Freedom of Information Act Guide expressly concedes that "in most cases records possessed by federal agency will meet this threshold" of identifiable operations or activities of the government. There can be no question that this is such a case.

2. For the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

The disclosure of the requested documents must have an informative value and be "likely to contribute to an understanding of Federal government operations or activities." The Freedom of Information Act Guide makes it clear that, in the Department of Justice's view, the "likely to contribute" determination hinges in substantial part on whether the requested documents provide information that is not already in the public domain. The requested records are "likely to contribute" to an understanding of your agency's activities because with limited exceptions they are not otherwise in the public domain and are not accessible other than through a FOIA request.

Given current concerns about the role and influence of outside groups on the federal government, this information will facilitate meaningful public understanding of such activities, therefore fulfilling the requirement that the documents requested be "meaningfully informative" and "likely to contribute" to an understanding of your agency's decision-making process and the controversial issue described above.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons.

Under this factor, the identity and qualifications of the requester—i.e., expertise in the subject area of the request and ability and intention to disseminate the information to the public—is examined. As described in our Request, above and below, ATI has a well-established interest and expertise in the subject of transparency and environmental regulatory policies, demonstrated through, *inter alia*, freedom of information requests and litigation.

More importantly, ATI unquestionably has the "specialized knowledge" and "ability and intention" to disseminate the information requested in the broad manner, and to do so in a manner that contributes to the understanding of the "public-at-large." ATI intends to disseminate the information it receives through FOIA regarding these government operations and activities in a variety of ways, including but not limited to, analysis and distribution to the media, distribution through publication and mailing, posting on the organizations' websites, and emailing.

ATI professionals appear regularly on radio and television shows to discuss issues on which they work, and similarly write in newspapers and for numerous other publications with broad readership including the National Review, Daily Caller, Pajamas Media, Big Government, Watts Up With That and American Spectator websites.

ATI intends to disseminate the information it receives through FOIA regarding these government operations and activities in a variety of ways, including but not limited to, analysis and distribution to the media, distribution through publication and mailing, posting on the organizations' websites, emailing and list-serve distribution to members.

4. The disclosure must contribute "significantly" to public understanding of government operations or activities.

There are currently no records publicly available regarding the requested information. Absent disclosure of the records requested, the public will have no understanding of the matter.

The records requested will contribute to the public understanding of the government's "operations and activities" associated with this critically important information. The disclosure of the requested records is also essential to public understanding of EPA decision making process, possible motivations involving highly political and otherwise controversial topics. After disclosure of these records, the public's understanding of this process will be significantly enhanced. The requirement that disclosure must contribute "significantly" to the public understanding is therefore met.

5. The extent to which disclosure will serve the requester's commercial interest, if any.

As already stated ATI has no commercial interest in the information sought or otherwise in the requested records. Nor does ATI have any intention to use these records in any manner that "furthers a commercial, trade, or profit interest" as those terms are commonly understood. ATI is a tax-exempt organization under sections 501(c)(3) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of ATI's mission to inform the public on matters of vital importance to the regulatory process and policies relating to science and the environment.

6. The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest.

See answers to factors 1-5 above. Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." When a commercial interest is found to exist and that interest would be furthered by the requested disclosure, an agency must assess the magnitude of such interest in order to compare it to the "public interest" in disclosure. If no commercial interest exists, an assessment of that non-existent interest is not required. As noted above, ATI has no commercial interest in the requested records.

Disclosure of this information is not "primarily" in ATI's commercial interest. On the other hand, it is clear that the disclosure of the information requested is in the public interest. It will contribute significantly to public understanding of the regulatory process as already described.

We respectfully request, because the public will be the primary beneficiary of this requested information, that EPA waive processing and copying fees pursuant to 5 U.S.C. §552(a)(4)(A). In the event that your agency denies a fee waiver, please send a written explanation for the denial. Also, please continue to produce the records as expeditiously as possible, but in any event no later than the applicable FOIA deadlines.

To keep costs and copying to a minimum please provide copies of all responsive records in electronic format if you have them.

Furthermore, as this matter involves a significant matter of public interest, and that the four different categories involve (three) different time parameters to search, please produce responsive records as they become available on a rolling basis.

Please direct all other disclosures to my attention at the following address:

American Tradition Institute  
c/p Chris Horner  
1489 Kinross Lane  
Keswick, VA 22947

Environmental Law Center at the American Tradition Institute • 2020 Pennsylvania Ave. NW #186  
Washington, D.C. 20006 • [www.atinstitute.org](http://www.atinstitute.org)

Transparency

We note the inaugural post on the White House "blog" made immediately upon President Obama's swearing-in to office which restated, in pertinent part, a prominent promise made when courting votes during the election campaign:

**Transparency** — President Obama has committed to making his administration the most open and transparent in history, and WhiteHouse.gov will play a major role in delivering on that promise. The President's executive orders and proclamations will be published for everyone to review, and that's just the beginning of our efforts to provide a window for all Americans into the business of the government. You can also learn about some of the senior leadership in the new administration and about the President's policy priorities. WhiteHouse.gov, "Change has come to WhiteHouse.gov", January 20, 2009 (12:01 p.m.), [http://www.whitehouse.gov/blog/change\\_has\\_come\\_to\\_whitehouse-gov/](http://www.whitehouse.gov/blog/change_has_come_to_whitehouse-gov/)

If you have any questions, or would like to discuss this matter further, don't hesitate to contact me by phone at (202) 262-4458 or email at [chris.horner@atinstitute.org](mailto:chris.horner@atinstitute.org).

Thank you for your attention to this matter.

Sincerely,

Christopher C. Horner  
[chris.horner@atinstitute.org](mailto:chris.horner@atinstitute.org)  
202.262.4458 (M)



Environmental Law Center  
American Tradition Institute

## REQUEST UNDER THE FREEDOM OF INFORMATION ACT

April 2, 2012

National Freedom of Information Officer  
U.S. EPA, Records, FOIA and Privacy Branch  
1200 Pennsylvania Avenue, NW (2822T)  
**BY ELECTRONIC MAIL**

By E-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov)

Dear EPA FOIA Officer,

On behalf of the American Tradition Institute (ATI), a non-profit public policy institute, please provide copies of all records meeting the description which follows and which were sent or received by or are in the possession of staff working now or during the period covered by this Request in or for the following five Offices at EPA HQ:

**Office of Associate Administrator for Policy,  
Office of Associate Administrator for External Affairs and Environmental  
Education,  
Office of Associate Administrator for Air and Radiation  
Office of the Deputy Administrator, and/or  
Office of the Assistant Administrator for Air and Radiation**

**Records Sought** -- Please provide us copies of any email sent from or to (including as cc:) the Offices identified above and:

- (1) from or to (including as cc:) anyone with "Lung" in their e-mail domain (this includes but is not limited to "Lung.org" or "LungUSA.org");

And/or

- (2) referencing the group American Lung Association (or "ALA").

Documents responsive to this Request will have been dated, sent or received by the identified EPA HQ offices between January 21, 2009 and the date EPA performs the relevant, respective search(es) in response to this Request, inclusive.

Environmental Law Center at the American Tradition Institute • 2020 Pennsylvania Ave. NW #186  
Washington, D.C. 20006 • [www.atinstitute.org](http://www.atinstitute.org)

### Scope of Request

Please identify and inform us of all responsive or potentially responsive documents within the statutorily prescribed time, and the basis of any claimed exemptions or privilege and to which specific responsive or potentially responsive document(s) such objection applies.

Further, please inform us of the basis of any partial denials or redactions. Specifically, if your office takes the position that any portion of the requested records is exempt from disclosure, we request that you provide us with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1972), with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA" pursuant to *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979), and "describ[ing] each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information." *King v. Department of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987).

In the event that some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable, non-exempt portions of the requested records. See 5 U.S.C. §552(b). If it is your position that a document contains non-exempt segments and that those non-exempt segments are so dispersed throughout the documents as to make segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed through the document. *Mead Data Central v. Department of the Air Force*, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemption in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

**We request you provide copies of responsive records in electronic format if you possess them as such, otherwise photocopies are acceptable.**

Please provide responsive documents in complete form, with any appendices or attachments as the case may be.

### Request for Fee Waiver

We request your office(s) waive any fees associated with this request. As explained below, this FOIA Request satisfies the factors listed in EPA's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute - that "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).

ATI is a nonprofit, tax-exempt public interest organization, with formal research, educational and publication functions as part of its mission, and release of these records will serve the public interest by contributing significantly to the public's understanding of the controversial topics of energy and environmental policy and specifically the ongoing debate over the transparency and credibility of the federal regulatory process involving a politically favored industry sector, and because such a release is not primarily in our organization's commercial interest.

ATI has no commercial interest in obtaining the requested information. Instead, ATI intends to use the requested information to inform the public, so the public can meaningfully assess claims made by government agencies and participate in the policymaking process related to EPA policy with complete, relevant information. ATI will derive no economic benefit from the requested material. No "specialized use" of the documents is anticipated outside of that described herein.

If our fee waiver request is denied we are willing to pay up to \$150.00, and in the event of any appeal as appropriate and regardless of that outcome or your response to this fee waiver request we request the search and document production proceed in the interim.

ATI has engaged in high-profile efforts promoting the public interest advocating transparency and sensible policies to protect human health and the environment, and has routinely received fee waivers under FOIA.

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.

The requested records relate to EPA's process and advice given it in the course of executing its taxpayer-funded work. Pursuant to FOIA this process, related correspondence, these determinations and the policies and procedures on which they are based are unquestionably "identifiable operations or activities of the government." The Department of Justice Freedom of Information Act Guide expressly concedes that "in most cases records possessed by federal agency will meet this threshold" of identifiable operations or activities of the government. There can be no question that this is such a case.

2. For the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

The disclosure of the requested documents must have an informative value and be "likely to contribute to an understanding of Federal government operations or activities." The Freedom of Information Act Guide makes it clear that, in the Department of Justice's view, the "likely to contribute" determination hinges in substantial part on whether the requested documents provide information that is not already in the public domain. The requested records are "likely to contribute" to an understanding of your agency's activities because with limited exceptions they are not otherwise in the public domain and are not accessible other than through a FOIA request.

Given current concerns about the role and influence of outside groups on the federal government, this information will facilitate meaningful public understanding of such activities, therefore fulfilling the requirement that the documents requested be "meaningfully informative" and "likely to contribute" to an understanding of your agency's decision-making process and the controversial issue described above.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons.

Under this factor, the identity and qualifications of the requester—i.e., expertise in the subject area of the request and ability and intention to disseminate the information to the public—is examined. As described in our Request, above and below, ATI has a well-established interest and expertise in the subject of transparency and environmental regulatory policies, demonstrated through, *inter alia*, freedom of information requests and litigation.

More importantly, ATI unquestionably has the "specialized knowledge" and "ability and intention" to disseminate the information requested in the broad manner, and to do so in a manner that contributes to the understanding of the "public-at-large." ATI intends to disseminate the information it receives through FOIA regarding these government operations and activities in a variety of ways, including but not limited to, analysis and distribution to the media, distribution through publication and mailing, posting on the organizations' websites, and emailing.

ATI professionals appear regularly on radio and television shows to discuss issues on which they work, and similarly write in newspapers and for numerous other publications with broad readership including the National Review, Daily Caller, Pajamas Media, Big Government, Watts Up With That and American Spectator websites.

ATI intends to disseminate the information it receives through FOIA regarding these government operations and activities in a variety of ways, including but not limited to, analysis and distribution to the media, distribution through publication and mailing, posting on the organizations' websites, emailing and list-serve distribution to members.

4. The disclosure must contribute "significantly" to public understanding of government operations or activities.

There are currently no records publicly available regarding the requested information. Absent disclosure of the records requested, the public will have no understanding of the matter.

The records requested will contribute to the public understanding of the government's "operations and activities" associated with this critically important information. The disclosure of the requested records is also essential to public understanding of EPA decision making process.

possible motivations involving highly political and otherwise controversial topics. After disclosure of these records, the public's understanding of this process will be significantly enhanced. The requirement that disclosure must contribute "significantly" to the public understanding is therefore met.

5. The extent to which disclosure will serve the requester's commercial interest, if any.

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6. The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest.

See answers to factors 1-5 above. Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." When a commercial interest is found to exist and that interest would be furthered by the requested disclosure, an agency must assess the magnitude of such interest in order to compare it to the "public interest" in disclosure. If no commercial interest exists, an assessment of that non-existent interest is not required. As noted above, ATI has no commercial interest in the requested records.

Disclosure of this information is not "primarily" in ATI's commercial interest. On the other hand, it is clear that the disclosure of the information requested is in the public interest. It will contribute significantly to public understanding of the regulatory process as already described.

We respectfully request, because the public will be the primary beneficiary of this requested information, that EPA waive processing and copying fees pursuant to 5 U.S.C. §552(a)(4)(A). In the event that your agency denies a fee waiver, please send a written explanation for the denial. Also, please continue to produce the records as expeditiously as possible, but in any event no later than the applicable FOIA deadlines.

To keep costs and copying to a minimum please provide copies of all responsive records in electronic format if you have them.

Furthermore, as this matter involves a significant matter of public interest, and that the four different categories involve (three) different time parameters to search, please produce responsive records as they become available on a rolling basis.

Please direct all other disclosures to my attention at the following address:

American Tradition Institute  
c/p Chris Horner  
1489 Kinross Lane  
Keswick, VA 22947

Transparency

We note the inaugural post on the White House "blog" made immediately upon President Obama's swearing-in to office which restated, in pertinent part, a prominent promise made when courting votes during the election campaign:

**Transparency** — President Obama has committed to making his administration the most open and transparent in history, and WhiteHouse.gov will play a major role in delivering on that promise. The President's executive orders and proclamations will be published for everyone to review, and that's just the beginning of our efforts to provide a window for all Americans into the business of the government. You can also learn about some of the senior leadership in the new administration and about the President's policy priorities. WhiteHouse.gov, "Change has come to WhiteHouse.gov", January 20, 2009 (12:01 p.m.), [http://www.whitehouse.gov/blog/change\\_has\\_come\\_to\\_whitehouse-gov/](http://www.whitehouse.gov/blog/change_has_come_to_whitehouse-gov/)

If you have any questions, or would like to discuss this matter further, don't hesitate to contact me by phone at (202) 262-4458 or email at [chris.horner@atinstitute.org](mailto:chris.horner@atinstitute.org).

Thank you for your attention to this matter.

Sincerely,

Christopher C. Horner  
[chris.horner@atinstitute.org](mailto:chris.horner@atinstitute.org)  
202.262.4458 (M)

# **ATI APPEAL EXHIBIT 3**

**AFFIDAVIT OF CHRISTOPHER C. HORNER, ESQ.**

**DIRECTOR OF LITIGATION, AMERICAN TRADITION INSTITUTE**

**APPEAL OF EPA DENIAL OF FOIA NOS. HQ-FOI-01052-12, HQ-FOI-01058-12**

My name is Christopher C. Horner, I am an attorney licensed to practice law in the District of Columbia. I attest to the following on behalf of the American Tradition Institute (ATI).

On April 2, 2012, on behalf of ATI I sent by electronic mail two Requests under the Freedom of Information Act (FOIA) to the Environmental Protection Agency, for certain records dated "between January 21, 2009 and the date EPA performs the relevant, respective search(es) in response to this Request, inclusive" and citing or referring to two different environmental pressure groups, the Sierra Club ("Sierra") and the American Lung Association ("ALA") (respectively, FOIA Request Nos. HQ-FOI-01052-12, HQ-FOI-01058-12).

EPA responded with acknowledgement letter(s) on April 2 and April 3, respectively.

Specifically, approximately one week after sending these requests the undersigned received a telephone call from a man identifying himself as being a FOIA officer with EPA, asking that we narrow the "Sierra" Request, FOIA No. HQ-FOI-01052-12. His position was that there are many people named "Sierra" and that if I rephrased the search parameter to Sierra Club it would expedite handling. The actual search parameters indicate such a narrowing is not necessary even given that fact, however, as we specify if the word "Sierra" appears in the *domain name*. (e.g., @Sierra.org).

Given that Sierra Club is commonly referred to among relevant professionals or communities simply as "Sierra", and that searching for "Sierra Club" would inappropriately limit

the search to exclude many responsive records, we concluded the call reaffirming that this Request sought records using "Sierra" as described, referencing Sierra Club.

After this telephone call, however, EPA provided no further response. EPA did not seek an extension or otherwise notify ATI of reasons it must delay responding to ATI. EPA provided no responsive records and is improperly withholding responsive information through selective and uneven application, and therefore misapplication, of FOIA.

On July 5, 2012, three months after EPA received these Requests, at approximately 1:10 p.m. EDT I telephoned the number provided on both acknowledgement letters (202.566.1667). This call was answered by a woman identifying herself as Vivian, and the FOIA specialist assigned FOIA No. HQ-FOI-01058-12. She informed me that "Cindy" [ph] in her office was assigned FOIA No. HQ-FOI-01052-12.

When Vivian pulled the file to check on the status she uttered what sounded like a surprised "Oh." After a pause she informed me, according to my contemporaneous notes of this conversation, that "Larry [Gottesman] told us he was going to write you a letter" and that neither she nor Cindy should take further action on the Requests that had been assigned to them. She stated that Mr. Gottesman had informed her that he would take over their handling, and specifically that he would send the fee waiver response and the initial determination.

ATI has not received any correspondence or otherwise communication from Mr. Gottesman after EPA's acknowledgement letters.

My contemporaneous notes of this conversation also reflect Vivian stating that the "Request went to the administrator's office and OAR [Office of Air and Radiation]". Vivian also mentioned that a factor in the fee waiver would likely be that the requests were "very broad". I

asked where "breadth" was located among the relevant factors in determining a fee waiver. After she did not understand my pronunciation of "breadth" twice, I restated her assertion that because they were "very broad" that would impact the Agency's fee waiver determination, asking where that consideration is found and that according to statute and regulation that is not an appropriate consideration. "Vivian" demurred and the call ended with Vivian stating that she would make a note to Mr. Gottesman and he would contact me the next day. We have not received any such contact.

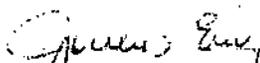
I submit this affidavit under penalty of perjury on this date, the 9th of July, 2012.

  
\_\_\_\_\_  
Christopher C. Homer, Esq.

\_\_\_\_\_  
July 9, 2012

ALBEMARLE  
VIRGINIA  
9 JULY 2012  
CHRISTOPHER HOMER

JOCELYN GALBAN EVES  
NOTARY PUBLIC  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES JUNE 30, 2013  
COMMISSION # 7275454

  
\_\_\_\_\_  
Jocelyn Galban Eves  
4/30/2012



**FREEDOM OF INFORMATION ACT REQUEST  
HQ-FOI-01058-12**

**REQUESTER:** Chris Horner

**Request Date:** April 02, 2012

**COMPANY:** Environ. Law Ctr. at American Tradition Institute

**Received Date:** April 03, 2012

**FEE Category:** Other

**Subject:** requesting a copy of emails sent from or to or cc: specified offices iwth "Lung" (or Lung.org or LungUSA.org) in their e-mail domain; and/or referencing the group American Lung Association (or ALA), January 21, 2009 to present

**Due Date:** May 01, 2012

**ASSIGNMENTS:**

AO

OAR

**SPECIAL INSTRUCTIONS:**

Fee Waiver requested.

Please e-mail Vivian Warden by 04/06 regarding if it seems that this will exceed \$14.00, or not, calculated in the "other" fee category. Also, if you would like to provide input regarding this determination, please e-mail me.

For Separate Replies unless someone e-mails me to indicate that separate would not be best for the Agency.

AO = Attn: OP and OEAEE

FS: vw



Request under the Freedom of Information Act -- certain records to, from or referencing Lung, ALA, etc.

chornerlaw

to:

FOIA HQ

04/02/2012 12:47 PM

Hide Details

From: chornerlaw@aol.com

To: FOIA HQ@EPA

RECEIVED  
APR 2 2012

VW

HQ-FOI01058-12

2 Attachments



ATI EPA ALA FOI Request.doc ATI EPA ALA FOI Request.pages

Dear EPA HQ FOIA Officer,

Please see the Request under the Freedom of Information Act attached in both Word and Pages (Mac) format.

if you have any questions please do not hesitate to contact me.

Yours,  
Chris Horner  
American Tradition Institute  
Environmental Law Center  
202.262.4458 (C)



Environmental Law Center  
American Tradition Institute

## REQUEST UNDER THE FREEDOM OF INFORMATION ACT

April 2, 2012

National Freedom of Information Officer  
U.S. EPA, Records, FOIA and Privacy Branch  
1200 Pennsylvania Avenue, NW (2822T)  
**BY ELECTRONIC MAIL**

RECEIVED  
APR 2 2012

By E-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov)

HQ-FOI-01058-12

Dear EPA FOIA Officer,

On behalf of the American Tradition Institute (ATI), a non-profit public policy institute, please provide copies of all records meeting the description which follows and which were sent or received by or are in the possession of staff working now or during the period covered by this Request in or for the following five Offices at EPA HQ:

**Office of Associate Administrator for Policy,  
Office of Associate Administrator for External Affairs and Environmental  
Education,  
Office of Associate Administrator for Air and Radiation  
Office of the Deputy Administrator, and/or  
Office of the Assistant Administrator for Air and Radiation**

**Records Sought** -- Please provide us copies of any email sent from or to (including as cc:) the Offices identified above and:

- (1) from or to (including as cc:) anyone with "Lung" in their e-mail domain (this includes but is not limited to "Lung.org" or "LungUSA.org");

And/or

- (2) referencing the group American Lung Association (or "ALA").

Documents responsive to this Request will have been dated, sent or received by the identified EPA HQ offices between January 21, 2009 and the date EPA performs the relevant, respective search(es) in response to this Request, inclusive.

### Scope of Request

Please identify and inform us of all responsive or potentially responsive documents within the statutorily prescribed time, and the basis of any claimed exemptions or privilege and to which specific responsive or potentially responsive document(s) such objection applies.

Further, please inform us of the basis of any partial denials or redactions. Specifically, if your office takes the position that any portion of the requested records is exempt from disclosure, we request that you provide us with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1972), with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA" pursuant to *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979), and "describ[ing] each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information." *King v. Department of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987).

In the event that some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable, non-exempt portions of the requested records. See 5 U.S.C. §552(b). If it is your position that a document contains non-exempt segments and that those non-exempt segments are so dispersed throughout the documents as to make segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed through the document. *Mead Data Central v. Department of the Air Force*, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemption in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

**We request you provide copies of responsive records in electronic format if you possess them as such, otherwise photocopies are acceptable.**

Please provide responsive documents in complete form, with any appendices or attachments as the case may be.

#### Request for Fee Waiver

We request your office(s) waive any fees associated with this request. As explained below, this FOIA Request satisfies the factors listed in EPA's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute - that "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).

ATI is a nonprofit, tax-exempt public interest organization, with formal research, educational and publication functions as part of its mission, and release of these records will serve the public interest by contributing significantly to the public's understanding of the controversial topics of energy and environmental policy and specifically the ongoing debate over the transparency and credibility of the federal regulatory process involving a politically favored industry sector, and because such a release is not primarily in our organization's commercial interest.

ATI has no commercial interest in obtaining the requested information. Instead, ATI intends to use the requested information to inform the public, so the public can meaningfully assess claims made by government agencies and participate in the policymaking process related to EPA policy with complete, relevant information. ATI will derive no economic benefit from the requested material. No "specialized use" of the documents is anticipated outside of that described herein.

If our fee waiver request is denied we are willing to pay up to \$150.00, and in the event of any appeal as appropriate and regardless of that outcome or your response to this fee waiver request we request the search and document production proceed in the interim.

ATI has engaged in high-profile efforts promoting the public interest advocating transparency and sensible policies to protect human health and the environment, and has routinely received fee waivers under FOIA.

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.

The requested records relate to EPA's process and advice given it in the course of executing its taxpayer-funded work. Pursuant to FOIA this process, related correspondence, these determinations and the policies and procedures on which they are based are unquestionably "identifiable operations or activities of the government." The Department of Justice Freedom of Information Act Guide expressly concedes that "in most cases records possessed by federal agency will meet this threshold" of identifiable operations or activities of the government. There can be no question that this is such a case.

2. For the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

The disclosure of the requested documents must have an informative value and be "likely to contribute to an understanding of Federal government operations or activities." The Freedom of Information Act Guide makes it clear that, in the Department of Justice's view, the "likely to contribute" determination hinges in substantial part on whether the requested documents provide information that is not already in the public domain. The requested records are "likely to contribute" to an understanding of your agency's activities because with limited exceptions they are not otherwise in the public domain and are not accessible other than through a FOIA request.

Given current concerns about the role and influence of outside groups on the federal government, this information will facilitate meaningful public understanding of such activities, therefore fulfilling the requirement that the documents requested be "meaningfully informative" and "likely to contribute" to an understanding of your agency's decision-making process and the controversial issue described above.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons.

Under this factor, the identity and qualifications of the requester—i.e., expertise in the subject area of the request and ability and intention to disseminate the information to the public—is examined. As described in our Request, above and below, ATI has a well-established interest and expertise in the subject of transparency and environmental regulatory policies, demonstrated through, *inter alia*, freedom of information requests and litigation.

More importantly, ATI unquestionably has the "specialized knowledge" and "ability and intention" to disseminate the information requested in the broad manner, and to do so in a manner that contributes to the understanding of the "public-at-large." ATI intends to disseminate the information it receives through FOIA regarding these government operations and activities in a variety of ways, including but not limited to, analysis and distribution to the media, distribution through publication and mailing, posting on the organizations' websites, and emailing.

ATI professionals appear regularly on radio and television shows to discuss issues on which they work, and similarly write in newspapers and for numerous other publications with broad readership including the National Review, Daily Caller, Pajamas Media, Big Government, Watts Up With That and American Spectator websites.

ATI intends to disseminate the information it receives through FOIA regarding these government operations and activities in a variety of ways, including but not limited to, analysis and distribution to the media, distribution through publication and mailing, posting on the organizations' websites, emailing and list-serve distribution to members.

4. The disclosure must contribute "significantly" to public understanding of government operations or activities.

There are currently no records publicly available regarding the requested information. Absent disclosure of the records requested, the public will have no understanding of the matter.

The records requested will contribute to the public understanding of the government's "operations and activities" associated with this critically important information. The disclosure of the requested records is also essential to public understanding of EPA decision making process, possible motivations involving highly political and otherwise controversial topics. After disclosure of these records, the public's understanding of this process will be significantly enhanced. The requirement that disclosure must contribute "significantly" to the public understanding is therefore met.

5. The extent to which disclosure will serve the requester's commercial interest, if any.

As already stated ATI has no commercial interest in the information sought or otherwise in the requested records. Nor does ATI have any intention to use these records in any manner that "furthers a commercial, trade, or profit interest" as those terms are commonly understood. ATI is a tax-exempt organization under sections 501(c)(3) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of ATI's

mission to inform the public on matters of vital importance to the regulatory process and policies relating to science and the environment.

6. The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest.

See answers to factors 1-5 above. Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." When a commercial interest is found to exist and that interest would be furthered by the requested disclosure, an agency must assess the magnitude of such interest in order to compare it to the "public interest" in disclosure. If no commercial interest exists, an assessment of that non-existent interest is not required. As noted above, ATI has no commercial interest in the requested records.

Disclosure of this information is not "primarily" in ATI's commercial interest. On the other hand, it is clear that the disclosure of the information requested is in the public interest. It will contribute significantly to public understanding of the regulatory process as already described.

We respectfully request, because the public will be the primary beneficiary of this requested information, that EPA waive processing and copying fees pursuant to 5 U.S.C. §552(a)(4)(A). In the event that your agency denies a fee waiver, please send a written explanation for the denial. Also, please continue to produce the records as expeditiously as possible, but in any event no later than the applicable FOIA deadlines.

To keep costs and copying to a minimum please provide copies of all responsive records in electronic format if you have them.

Furthermore, as this matter involves a significant matter of public interest, and that the four different categories involve (three) different time parameters to search, please produce responsive records as they become available on a rolling basis.

Please direct all other disclosures to my attention at the following address:

American Tradition Institute  
c/p Chris Horner  
1489 Kinross Lane  
Keswick, VA 22947

#### Transparency

We note the inaugural post on the White House "blog" made immediately upon President Obama's swearing-in to office which restated, in pertinent part, a prominent promise made when courting votes during the election campaign:

**Transparency** — President Obama has committed to making his administration the most open and transparent in history, and WhiteHouse.gov will play a major role in delivering on that promise. The President's executive orders and proclamations will be published for

Environmental Law Center at the American Tradition Institute • 2020 Pennsylvania Ave. NW #186  
Washington, D.C. 20006 • [www.atinstitute.org](http://www.atinstitute.org)

everyone to review, and that's just the beginning of our efforts to provide a window for all Americans into the business of the government. You can also learn about some of the senior leadership in the new administration and about the President's policy priorities. WhiteHouse.gov, "Change has come to WhiteHouse.gov", January 20, 2009 (12:01 p.m.), [http://www.whitehouse.gov/blog/change\\_has\\_come\\_to\\_whitehouse-gov/](http://www.whitehouse.gov/blog/change_has_come_to_whitehouse-gov/)

If you have any questions, or would like to discuss this matter further, don't hesitate to contact me by phone at (202) 262-4458 or email at [chris.horner@atinstitute.org](mailto:chris.horner@atinstitute.org).

Thank you for your attention to this matter.

Sincerely,

Christopher C. Horner

[chris.horner@atinstitute.org](mailto:chris.horner@atinstitute.org)  
202.262.4458 (M)



Linda  
Chappell/DC/USEPA/US  
07/25/2012 12:20 PM

To Don Zinger, OAR Special Assistants  
cc  
bcc  
Subject questions on [REDACTED]

Hi Everyone,

I have gotten a few questions on the [REDACTED].

The questions are as follows:

[REDACTED]

3) Will the extension on SO2 designations resolve the potential Sierra Club lawsuit?

[REDACTED]

[REDACTED]

Thanks,  
Linda

---

Linda M. Chappell, Ph.D.  
Special Assistant, Office of the Administrator  
United States Environmental Protection Agency  
Mailing Address: 1200 Pennsylvania Avenue, N.W., Mail Code: 1101A, Washington, D.C. 20460  
Tel: 202-564-2234 / Mobile: 202-734-8292/ Fax: 202-501-1490 / chappell.linda@epa.gov

Lisa Garcia/DC/USEPA/US

05/18/2010 12:44 PM

To Lee Veal

cc Dana Tulis, "Joseph Goffman", Janet Woodka, Kelly Rimer, Seth Oster

bcc

Subject Re: meeting with enviros

FYI - Spoke to dana and wanted to mention that these may come up in the air meeting :

In a meeting earlier with the Administrator, a discussion of community questions of H2S came up. It turns out LEAN posted a message (and we heard this at community meetings) saying that the H2S exceedances at 2 stations were 100x the acceptable health standard.

turns out they were comparing it to an odor standard. Also, EPA later reported that there was equipment malfunction and it was corrected.

EPA also reported an PM10 exceedance which would be a concern.

Lisa F. Garcia, Esq.  
Senior Advisor to the Administrator  
for Environmental Justice

US EPA  
1200 Pennsylvania Ave NW  
Room 3000 ARS: MC-1101A  
Washington, DC 20460  
Tel: (202) 564 2515  
E-mail: [garcia.lisa@epa.gov](mailto:garcia.lisa@epa.gov)

Lee Veal

[Got it. I've reached out to OAQPS. I was not aw...](#)

05/18/2010 11:14:43 AM

From: Lee Veal/DC/USEPA/US  
To: Dana Tulis/DC/USEPA/US@EPA  
Cc: "Joseph Goffman" <[Goffman.Joseph@epamail.epa.gov](mailto:Goffman.Joseph@epamail.epa.gov)>, Janet Woodka/DC/USEPA/US@EPA, Kelly Rimer/RTP/USEPA/US@EPA, Lisa Garcia/DC/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA  
Date: 05/18/2010 11:14 AM  
Subject: Re: meeting with enviros

Got it. I've reached out to OAQPS.

I was not aware of the Bucket Brigade or LEAN until mid-morning today. We should be able to include them.

Lee B. Veal  
Director, Center for Radiological Emergency Management  
Radiation Protection Division  
Office of Radiation and Indoor Air  
Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington DC, 20460  
Mail Code: 6608J

202-343-9448  
cell 202-617-4322

Dana Tulis      Please work with OAR and the POC Seth is assi...      05/18/2010 10:53:28 AM

From: Dana Tulis/DC/USEPA/US  
To: Lisa Garcia/DC/USEPA/US@EPA, Kelly Rimer/RTP/USEPA/US@EPA, Lee Veal/DC/USEPA/US@EPA  
Cc: "Joseph Goffman" <Goffman.Joseph@epamail.epa.gov>, Janet Woodka/DC/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA  
Date: 05/18/2010 10:53 AM  
Subject: Re: meeting with enviros

---

Please work with OAR and the POC Seth is assigning.

-----  
Dana S. Tulis  
Acting Office Director  
Office of Emergency Management  
Environmental Protection Agency  
202-564-8600

Lisa Garcia      Why have 2 meetings? Can we get air to extend...      05/18/2010 10:49:48 AM

From: Lisa Garcia/DC/USEPA/US  
To: Janet Woodka/DC/USEPA/US@EPA  
Cc: Dana Tulis/DC/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA, "Joseph Goffman" <Goffman.Joseph@epamail.epa.gov>  
Date: 05/18/2010 10:49 AM  
Subject: Re: meeting with enviros

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[REDACTED]

Janet Woodka

----- Original Message -----

**From:** Janet Woodka  
**Sent:** 05/18/2010 10:39 AM EDT  
**To:** Lisa Garcia  
**Cc:** Dana Tulis; Seth Oster; Stephanie Owens  
**Subject:** Re: meeting with enviros

[REDACTED]

Dana sent me the following from the Air office:

NRDC and American Lung association will be on the call with the Air office today at 4 PM EDT. Please see the list of invitees below. We will provide them with an update wrt air monitoring and answer their questions.

It was our understanding from a mtg with the Administrator yesterday, that we needed to have a meeting

with National groups. [REDACTED]

[REDACTED]. Please advise.

Meeting Invitees - May 18  
John Walke, NRDC  
Gina Solomon, NRDC  
Janice Nolan - American Lung Association

OAR:  
Beth Craig  
Steve Page  
Jeff Clark  
plus OAR monitoring and health experts will be on the line to answer technical questions

We can invite AI in R6 and Stan from R4 as well.

Janet Woodka  
Senior Advisor to the Deputy Administrator  
Acting Director of Regional Operations  
U.S. EPA  
email: woodka.janet@epa.gov  
phone: 202-564-7362  
cell: 202-360-7465

Lisa Garcia

I think it was being forwarded to Dana by air staff...

05/18/2010 10:32:41 AM

From: Lisa Garcia/DC/USEPA/US  
To: Janet Woodka/DC/USEPA/US@EPA  
Cc: Dana Tulis/DC/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA, Stephanie Owens/DC/USEPA/US@EPA  
Date: 05/18/2010 10:32 AM  
Subject: Re: meeting with enviros

I think it was being forwarded to Dana by air staff.

Janet Woodka

----- Original Message -----

**From:** Janet Woodka  
**Sent:** 05/18/2010 10:24 AM EDT  
**To:** Lisa Garcia  
**Cc:** Dana Tulis; Seth Oster; Stephanie Owens  
**Subject:** Re: meeting with enviros

Dana and Lisa -

Who wants to reach out to the air office to get a list of who's going to be on the call?

Janet

Janet Woodka  
Senior Advisor to the Deputy Administrator  
Acting Director of Regional Operations  
U.S. EPA  
email: woodka.janet@epa.gov  
phone: 202-564-7362

cell: 202-360-7465

Lisa Garcia

I'm not familiar with any NGO/ enviro mtg for tod...

05/18/2010 10:08:58 AM

From: Lisa Garcia/DC/USEPA/US  
To: Dana Tulis/DC/USEPA/US@EPA  
Cc: Janet Woodka/DC/USEPA/US@EPA, "Seth Oster" <Oster.Seth@epamail.epa.gov>, "Stephanie Owens" <Owens.Stephanie@epamail.epa.gov>  
Date: 05/18/2010 10:08 AM  
Subject: Re: meeting with enviros

---

I'm not familiar with any NGO/ enviro mtg for today other than the 4pm The meeting is being run out of the air office.

The admin wants [REDACTED].

Mathy is also doing an ECOS call.

If I hear of any other meetings I'll keep folks in the loop.

Lisa g

Dana Tulis

----- Original Message -----

**From:** Dana Tulis  
**Sent:** 05/18/2010 09:18 AM EDT  
**To:** Lisa Garcia  
**Cc:** Janet Woodka  
**Subject:** meeting with enviros

Can you send me a list of the enviros that Mathy is meeting with today? Please include Janet Woodka on the response b/c she needs this for CEQ.

Thanks!

---

Dana S. Tulis  
Acting Office Director  
Office of Emergency Management  
Environmental Protection Agency  
202-564-8600

**Lisa  
McClain-Vanderpool/R8/USEP  
A/US**

05/09/2012 03:18 PM

To Christopher Mylan

cc John Millett, Cohen.Justin, Nate McMichael

bcc

Subject Re: Electric Vehicles - talking points

Thanks Chris!

The talk is 10 minutes - you might be more aware of the most current perspective the Administration is giving. I've looked at a lot of LJ's speeches and our air folks are also working on some emission numbers for metro Denver - but if you have some nuggets that would be great. I'm thinking maybe 10 bullets? Emphasis on air quality on the local level and how EVs would address that.

Do you have a number of EVs on the road today (in the US). I found one based on production estimates of 167,000 (not counting hybrids) from DOE's status of the 1 million EV goal from Obama's speech.

Lisa

Lisa McClain-Vanderpool  
EPA Region 8  
Public Affairs Office  
Office (303)312-6077  
Cell (303)501-4027  
mcclain-vanderpool.lisa@epa.gov

Christopher Mylan

Hi Lisa, How long/how many bullets where you s...

05/09/2012 12:00:04 PM

From: Christopher Mylan/DC/USEPA/US  
To: John Millett/DC/USEPA/US@EPA  
Cc: Lisa McClain-Vanderpool/R8/USEPA/US@EPA, Cohen.Justin@epamail.epa.gov, Nate McMichael/DC/USEPA/US@EPA  
Date: 05/09/2012 12:00 PM  
Subject: Re: Electric Vehicles - talking points

Hi Lisa,

How long/how many bullets where you shooting for? We have whole speeches and/or individual stats...

Thanks,

Christopher Mylan  
US EPA Communications Specialist  
Office of Transportation and Air Quality  
Office: 202.564.7411  
Mobile: 412.999.4548

John Millett

Hi Lisa -- Maybe Justin or Chris have something...

05/09/2012 01:56:21 PM

From: John Millett/DC/USEPA/US  
To: Lisa McClain-Vanderpool/R8/USEPA/US@EPA  
Cc: Cohen.Justin@epamail.epa.gov, Christopher Mylan/DC/USEPA/US@EPA, Nate McMichael/DC/USEPA/US@EPA

Date: 05/09/2012 01:56 PM  
Subject: Re: Electric Vehicles - talking points

---

Hi Lisa -- Maybe Justin or Chris have something off the shelf . . .

~~~~~  
John Millett
Office of Air and Radiation Communications
U.S. Environmental Protection Agency
5411 Ariel Rios Building North
Washington, DC 20460
Phone: 202/564-2903
Cell: 202/510-1822

Lisa McClain-Vanderpool	Hi John We are preparing some talking po...	05/09/2012 01:39:41 PM
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From: Lisa McClain-Vanderpool/R8/USEPA/US
To: John Millett/DC/USEPA/US@EPA
Date: 05/09/2012 01:39 PM
Subject: Electric Vehicles - talking points

Hi John
We are preparing some talking points for our RA to speak at an event showcasing electric vehicles next week.

He also has a tv interview (along with the American Lung Association person).

I was wondering if you have a good contact for me who could help with a few TPs?

The focus will be air quality but any stats, etc. would be great. We'll mention the President's 1 million EVs goal - we're open to input!

Lisa

Lisa McClain-Vanderpool
EPA Region 8
Public Affairs Office
Office (303)312-6077
Cell (303)501-4027
mcclain-vanderpool.lisa@epa.gov

Mr. Robert Ukeiley
435R Chestnut Street, Suite 1
Berea, Kentucky 40403

Dear Mr. Ukeiley:

The Environmental Protection Agency has reviewed the July 28, 2010 petition (Petition) you submitted on behalf of the Sierra Club requesting that the EPA initiate rulemaking to designate air quality models for ozone and PM_{2.5} for use by all major sources applying for a prevention of significant deterioration (PSD) permit. In light of our review, the EPA believes it is appropriate to engage in a rulemaking process to consider whether updates to EPA's *Guideline on Air Quality Models* as published as Appendix W of 40 CFR Part 51 (Appendix W) are warranted. Therefore, the EPA is granting the Petition to engage in rulemaking to evaluate updates to Appendix W and, as appropriate, incorporate new analytical techniques or models for ozone and secondary PM_{2.5}. This is not to suggest that the EPA agrees with the specific contentions and allegations in the Petition; however, the EPA will take the information in the Petition under advisement in the rulemaking process.

The EPA has initiated actions that will support rulemaking to address modeling and technical analysis of ozone and PM_{2.5} within Appendix W, including scheduling the 10th Conference on Air Quality Modeling in March 2012 where we intend to discuss methods for addressing ozone and secondary PM_{2.5} impacts and beginning work on a draft guidance for PM_{2.5} permit modeling, both of which are described in more detail below. These guidelines are periodically revised to ensure that new model developments or regulatory requirements are incorporated.

The EPA will use the existing process and procedures under Section 320 of the Clean Air Act (CAA) to complete the appropriate rulemaking process to update Appendix W in response to this Petition. Section 320 requires the EPA to conduct a conference on air quality modeling at least every three years and give special attention to appropriate modeling necessary for carrying out the provisions in Part C of Title I of the CAA relating to PSD. The EPA has used these conferences to develop standardized air quality modeling procedures particularly in connection with PSD permitting. The EPA's *Guideline* was originally published in April 1978. Section 165(e)(3)(D) of the CAA requires the Administrator to adopt regulations specifying with "reasonable particularity each air quality model or models to be used under specified sets of conditions for purposes of this part." To carry out these requirements, in June 1978, the *Guideline on Air Quality Models* was incorporated by reference in regulations promulgated for PSD [40 CFR 51.24]. 43 FR 26388, 26398 (June 19, 1978); 51 FR 32176 (Sept. 1986); 53 FR 392 (Jan. 6, 1988). The 1990 CAA Amendments provided for continued authority to conduct air quality modeling conferences and associated revisions to Appendix W that form the basis for the EPA's continuing efforts to prescribe with "reasonable particularity" air quality models, and meteorological and emission data bases, suitable for modeling National Ambient Air Quality Standards (NAAQS) and increments. See CAA § 320, 42 U.S.C. §7620.

The EPA most recently used this process to update Appendix W with provisions that incorporated two new dispersion models. The 7th Conference on Air Quality Modeling was held in June 2000 with the purpose of receiving comments on the EPA's proposed rule from April 2000 to add several new modeling techniques to Appendix W. Based on public comments from this conference, Appendix W was substantially revised through notice and comment rulemaking with a final rule in April 2003 that adopted the CALPUFF model for long range transport to address impacts on federal Class 1 areas and a subsequent final rule in November 2005 that replaced the Industrial Source Complex (ISC3) model with the *AMS/EPA Regulatory MODEL* (AERMOD) for near-field regulatory assessments.

The complex chemistry of ozone and secondary formation of PM_{2.5} are well-documented and have historically presented significant challenges to the designation of particular models for assessing the impacts of individual stationary sources on the formation of these air pollutants (NARSTO, 2000; NARSTO, 2004; Seinfeld and Pandis, 1998; Cohan and Napelenok, 2011). Because of these considerations, the EPA's judgment in the past has been that it was not technically sound to designate with particularity specific models that must be used to assess the impacts of a single source on ozone concentrations.¹ Instead, the EPA has chosen to satisfy the requirements of Section 165(e) (3) (D) of the CAA through a process of determining particular models or other analytical techniques that should be used on a case-by-case basis. As stated in Section 5.2.1.c of Appendix W, the “[c]hoice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions.” Under this guideline, the appropriate methods are determined in consultation with the EPA Regional Office on a case-by-case basis. 40 C.F.R. Part 51, Appendix W, section 5.2.1.c. A modeling protocol should be developed and approved by the EPA Regional Office, the state/local agency, and the applicant to ensure that the analysis conducted will conform to the recommendations, requirements, and principles of Appendix W. 40 C.F.R. Part 51, Appendix W, section 3.2.2. Given the complexities of ozone formation, this case-by-case consultation process has been as reasonably particular as the EPA considered justified in the past. Appendix W section 5.2.2 provides similar direction for such a case-by-case consultation process in addressing secondary PM_{2.5} and encourages control agencies with jurisdiction over areas having potential air quality issues related to secondary PM_{2.5} to use models which integrate chemical and physical processes important to the formation, transport, and decay of sulfates and nitrates, such as Models-3/CMAQ.

However, recent advances in photochemical modeling science suggest that it may now be reasonable for the EPA to provide more specific, generally-applicable guidelines that identify particular analytical techniques or models that may be used under specific circumstances for assessing the impacts of an individual source on ozone concentrations and on the secondary formation of PM_{2.5}. These advances have resulted in some methods that may allow for tracking the formation and transport of ozone and secondary PM_{2.5} impacts from specific emissions sources and calculating the contribution of sources and precursors to ozone and PM_{2.5} at individual receptor locations. In fact, the EPA engaged the modeling community on these developments at the 9th Conference on Air Quality Modeling in October 2008 by devoting a session to photochemical modeling with instrumented techniques such as “source apportionment” to promote understanding of their emerging capabilities by the regulatory modeling community.

¹ We note that this technical judgment has no effect on the obligation of sources subject to PSD to conduct a source impact analysis and demonstrate that a proposed source or modification will not cause or contribute to a violation of any NAAQS or applicable increment. 40 CFR 51.166(k); 52.21(k). That is, the inclusion of a process rather than a specific preferred model in Appendix W does not relieve the source of the requirement to make this demonstration, which necessarily involves an analysis.

The EPA has scheduled the 10th Conference on Air Quality Modeling for March 13-15, 2012, in Research Triangle Park, North Carolina. We intend to issue the *Federal Register* notice announcing the conference in early 2012 which will outline the agenda with the topic of chemistry models and related techniques for addressing impacts of ozone and secondary PM_{2.5} being a major session and focus of the EPA's efforts to engage the regulatory modeling community. This modeling conference will serve as the initial venue for gaining public input to begin the rulemaking process of updating Appendix W. As was the case in promulgating new dispersion models (CALPUFF and AERMOD) in 2003 and 2005, the EPA expects to form a similar workgroup to conduct the necessary evaluations and inter-comparisons of technical approaches and models to inform the rulemaking process and provide sufficient technical justification for those technical approaches and/or models that are ultimately determined to be appropriate for incorporation into Appendix W. This workgroup will be critical in informing the rulemaking process, and the reports and other findings will be made publicly available and be central to discussion at future modeling conferences. Consistent with the past practice described earlier, the EPA expects such discussion to occur at the 11th Conference on Air Quality Modeling with consideration of the specifics of the EPA's proposed rule to update Appendix W.

Furthermore, as this complex rulemaking process proceeds, the EPA will be taking additional steps in the interim to enhance understanding of acceptable techniques for evaluating impacts of individual source emissions on ozone concentrations and secondary PM_{2.5} formation. The EPA is preparing and will be seeking input on draft guidance for PM_{2.5} permit modeling that we intend to release for public comment in mid-January 2012. This guidance is necessary in the interim to inform case-by-case determination of appropriate methods as sources should now conduct a PM_{2.5}-based analysis under NSR and PSD to demonstrate compliance with the PM_{2.5} NAAQS rather than relying upon a PM₁₀-based analysis in accordance with past EPA guidance. 76 FR 28646, 28648, 28659 (May 18, 2011); Memorandum from Director of Office of Air Quality Planning and Standards, "Modeling Procedures for Demonstrating Compliance with PM_{2.5} NAAQS" (March 23, 2010). In addition, with respect to both ozone and PM_{2.5}, the EPA will also be taking steps to emphasize the importance of the existing consultation process and to provide greater clarity to states and the regulated community regarding our expectations for a complete and successful process of consulting with the EPA's Regional Offices pursuant to Appendix W sections 5.2.1.c and 5.2.2.1.c to identify the most appropriate analytical techniques to be used on a case-by-case basis for addressing the impacts of individual sources on ozone concentrations and secondary PM_{2.5} formation.

The Petition also suggests that the EPA should take the position that it neither has nor will use a "significance" test as part of the PSD compliance demonstration for the ozone NAAQS. The Petition further implies that the Petitioner interprets significance levels to be inconsistent with EPA's PSD regulations at 40 CFR 52.21(k) because that regulation refers to proposed sources or modifications that cause or contribute to a violation, but does not include the word "significantly" as a modifier for "cause or contribute to a violation." Petition at 13. The EPA has not established a significant impact level (SIL) for ozone in its regulations (40 CFR 51.165(b), 51.166(k) (2), 52.21(k) (2)) or identified a specific SIL for ozone in any guidance. However, footnote 1 to sections 51.166(I) (5) (I) of the EPA's regulations says the following: "No de minimis air quality level is provided for ozone. However, any net emission increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of air quality data." The EPA included a similar note in a guidance listing Significant Impact Levels. The 1990 NSR Workshop Manual, page C.28 footnote b says the following with respect to the then-applicable one-hour ozone NAAQS: "No significant ambient impact concentration has been established. Instead, any net

emissions increase of 100 tons per year of VOC subject to PSD would be required to perform an ambient impact analysis.” Based on these statements, this 100 tons per year (TPY) value has been used by some permitting authorities in a manner similar to a SIL to assess whether a detailed air quality analysis should be conducted for ozone. While these statements suggest a less rigorous analysis may be appropriate for sources emitting less than 100 TPY of these precursors, they have not been revisited by the EPA since the promulgation of the 8-hour ozone NAAQS and do not reflect a categorical conclusion by the EPA that every source emitting less than 100 TPY of NO_x or VOCs will not cause or contribute to a violation of the current ozone NAAQS. The EPA believes it unlikely a source emitting below these levels would contribute to such a violation of the 8-hour ozone NAAQS, but consultation with an EPA Regional Office should still be conducted in accordance with section 5.2.1.c. of Appendix W when reviewing an application for sources with emissions of these ozone precursors below 100 TPY.

EPA will take the Petition’s recommendation regarding the appropriateness of a significance level for the NAAQS compliance demonstration for ozone under advisement. Nevertheless, EPA believes it generally has authority to use significance levels and that use of such levels can be consistent with the PSD requirements. For example, if modeling becomes applied more routinely as part of the required NAAQS compliance demonstration for ozone, we believe that it may become appropriate to define a SIL for ozone to help facilitate that demonstration. The EPA recently promulgated a SIL for PM_{2.5} and explained in that action why we believe the CAA does not preclude the EPA from establishing significance values to effectively implement the PSD requirement to demonstrate that a source’s emissions will not cause or contribute to a violation of a NAAQS or PSD increment. 75 FR 65864, October 20, 2010. The Petition also states that “if the EPA insists on setting a significance level, it should be no more than 0.3 parts per billion.” The EPA will take this recommendation under advisement as we consider whether to establish a SIL or similar value for ozone.

Finally, the Petition requested that the EPA finalize the proposed PM_{2.5} increments (72 FR 54112, September 21, 2007). The EPA promulgated the final rule in the Fall of 2010 (75 FR 65864, October 20, 2010) to establish several components for making PSD permitting determinations for PM_{2.5} including increments, SILs, and a significant monitoring concentration (SMC). This final rule became effective on December 20, 2010.

Thus, for the reasons set forth above, the EPA grants the Petition for rulemaking as described in this response. We appreciate your interest in these matters and look forward to your contributions to the upcoming 10th modeling conference and subsequent rulemaking process.

Sincerely,

Lisa P. Jackson
Administrator

Liz Naess/RTP/USEPA/US

12/21/2011 11:44 AM

To Jean Walker, Peter South, Jenny Noonan, Janet McCabe,
Kristina Friedman
cc Melina Williams, Richard Wayland, Tyler Fox, Brian Doster,
Dan Deroeck, Raj Rao, Anna Wood, Joseph-J Dougherty
bcc

Subject FINAL Sierra Club petition letter for Administrator's signature

Jean,

Here is the final version of the Sierra Club Petition letter and cover memo for CMS.

Thanks, Liz



Sierra Club response ozone modeling 12-21-11 final.docx



■■■■ cover memo for ozone and PM2.5 petition response.docx

Liz Naess, Ph.D.
Air Quality Assessment Division (C304-02)
U.S. EPA OAQPS
Research Triangle Park, NC 27711
919-541-1892 (phone)
919-972-1249 (mobile)

**Nancy
Grantham/R1/USEPA/US**

06/12/2012 06:55 AM

To John Millett

cc

bcc

Subject Fw: round table on weds in boston

----- Forwarded by Nancy Grantham/R1/USEPA/US on 06/12/2012 06:55 AM -----

From: Nancy Grantham/R1/USEPA/US
To: Brendan Gilfillan <gilfillan.brendan@epa.gov>, Alisha Johnson/DC/USEPA/US@EPA,
Cc: Shira Sternberg/R1/USEPA/US@EPA, Nancy Grantham/R1/USEPA/US@EPA
Date: 06/11/2012 02:54 PM
Subject: round table on weds in boston

hi there --

curt's schedule calls for him to participate in a round table -- actually a panel format with q and a -- on weds -- hosted by Environment America, National Wildlife Federation, Sierra Club -- same groups that have hosted rallies in Boston and Chicago where RAs spoke -- and they delivered their thousands of comments on the carbon rule ---

this one is at Boston Public Library and will include panelists from Harvard Medical School, Union of Concerned Scientists, Ceres, and env economist from Emerson College.

the focus is clean air rules at the 30,000 foot view -- why they are good for New England, etc. We would use similar remarks to those Curt gave recently in ME on a similar panel/round table hosted by the Natural Resources Council of ME (see attached).

Curt is not able to stay for the q and a -- which they know.

thoughts on this?

thanks

ng



Clean Air Roundtable, June 2012 ████████

Nancy
Grantham/R1/USEPA/US

03/14/2012 02:30 PM

To John Millett, Brendan Gilfillan, Arvin Ganesan, Laura Vaught

cc

bcc

Subject Please let us know your thoughts .. Fw: Touching Base

we are inclined to do this .. this is the same group that we did a round table with and did a mats event with ... thanks ng

----- Forwarded by Nancy Grantham/R1/USEPA/US on 03/14/2012 02:28 PM -----

From: Catherine Corkery <catherine.corkery@sierraclub.org>
To: Nancy Grantham/R1/USEPA/US@EPA
Date: 03/12/2012 10:24 AM
Subject: Re: Touching Base

We are working with Sen Shaheen's office to have a round table discussion about carbon solutions such as energy savings programs and projects that will help NH move ahead and would like for Mr Spalding to talk about the carbon ruling that requires the EPA to regulate carbon.

We want the context to be the good work of the EPA and the benefits: jobs and pollution reductions. The Senator is working on her schedule to be the key note speaker. She will talk about the concerns of continuing without a carbon rule and the opportunities NH would be able to explore with one, highlighting local businesses addressing the issues.

It would be a great venue for Mr. Spalding to highlight the meaningful environmental and health improvements to American lives with the introduction of the Clean Air Act as well as the mission of the EPA to continue doing so.

April 4 and 5th are prospective dates at this time but at this point there is some flexibility.

Please let me know immediately what more you need.

Cathy

On Mon, Mar 12, 2012 at 7:00 AM, Nancy Grantham <Grantham.Nancy@epamail.epa.gov> wrote:

Hi Cathy,

Sorry for the delay in getting back to you.

If you could, it would great if you can send me an email describing what you would like to do in early April in NH -- that way I can coordinate messaging with our air offices here and at HQ.

thanks

nancy grantham

--

Catherine M. Corkery
Chapter Director

Field Organizer
New Hampshire Sierra Club
40 North Main Street 2 nd Floor
Concord, NH 03301
Office: [603-224-8222](tel:603-224-8222)
Cell: [603-491-1929](tel:603-491-1929)
[catherine.corkery@sierraclub .org](mailto:catherine.corkery@sierraclub.org)
www.nhsierraclub.org

Go Green with the Manchester Monarchs on Sunday, March 25th at 3PM and a portion of your ticket will go to NH Sierra Club!!

Ragan Tate/DC/USEPA/US
05/15/2012 05:57 PM

To Brenda Mallory, Bruce Aber, Carl Dierker, Joseph Donovan,
Kavita Batra, OGC ALL USERS, OGC RCs and DRCs,
Richard Kuhlman

cc

bcc

Subject Confirmed: SWERLO Brownbag - RCRA Definition of Solid
Waste and EJ Methodology Analysis (May 16 12:00 PM EDT
in ARN 4045)

Under the October 2008 Definition of Solid Waste (DSW) final rule certain hazardous secondary materials being recycled would no longer be regulated as hazardous waste, as long as certain conditions were met. The intended effect of the DSW rule was to encourage safe recycling of hazardous secondary material and answer long-standing questions about the RCRA definition of solid waste. Based on issues raised by Sierra Club and others regarding the protectiveness of the rule, particularly for low-income and minority communities, EPA committed to performing an expanded environmental justice analysis of the 2008 DSW rule. EPA held three public meetings to discuss the methodology for the DSW EJ analysis. The analysis is meant to be a model for EJ analyses to be conducted by EPA for rulemakings.

Alan Carpien will introduce the issue and Tracy Atagi of the Office of Resource Conservation and Recovery (ORCR) will be presenting a summary of the EJ analysis.

CALL-IN: [REDACTED] **Conference Code** [REDACTED]

**PLEASE DO NOT PLACE THE CONFERENCE CALL
ON HOLD TO PREVENT INTERFERENCE ON THE LINE**

Document Log Item

Ex. 2 - Low

Addressing**From**

Ragan Tate/DC/USEPA/US

ToBrenda Mallory/DC/USEPA/US@EPA
Bruce Aber/R2/USEPA/US@EPA
Carl Dierker/R1/USEPA/US@EPA**CC****BCC****Description**

Form Used: Notice

Subject**Date/Time**Confirmed: SWERLO Brownbag - RCRA Definition
of Solid Waste and EJ Methodology Analysis (May
16 12:00 PM EDT in ARN 4045)

05/15/2012 05:57 PM

of Attachments**Total Bytes****NPM****Contributor**

0

5,547

Larry Dollison

Processing**Comments** Clear Category Non-responsive  Printed

Body

Document Body

Under the October 2008 Definition of Solid Waste (DSW) final rule certain hazardous secondary materials being recycled would no longer be regulated as hazardous waste, as long as certain conditions were met. The intended effect of the DSW rule was to encourage safe recycling of hazardous secondary material and answer long-standing questions about the RCRA definition of solid waste. Based on issues raised by Sierra Club and others regarding the protectiveness of the rule, particularly for low-income and minority communities, EPA committed to performing an expanded environmental justice analysis of the 2008 DSW rule. EPA held three public meetings to discuss the methodology for the DSW EJ analysis. The analysis is meant to be a model for EJ analyses to be conducted by EPA for rulemakings.

Alan Carpien will introduce the issue and Tracy Atagi of the Office of Resource Conservation and Recovery (ORCR) will be presenting a summary of the EJ analysis.

CALL-IN: 8 [REDACTED] Conference Code [REDACTED]

**PLEASE DO NOT PLACE THE CONFERENCE CALL
ON HOLD TO PREVENT INTERFERENCE ON THE LINE**

Rebecca
Weber/R7/USEPA/US
09/27/2010 12:45 PM

To Janet McCabe
cc
bcc
Subject Fw: Sunflower-related letter

Pretty general letter response but FYI. We also got a letter from Sunflower attorneys countering Sierra letter. This letter will go out to both

----- Forwarded by Rebecca Weber/R7/USEPA/US on 09/27/2010 11:43 AM -----

From: MarkA Smith/R7/USEPA/US
To: Raj Rao/RTP/USEPA/US@EPA
Cc: Anna Wood/DC/USEPA/US, Rebecca Weber/R7/USEPA/US@EPA, Jon Knodel/R7/USEPA/US@EPA, Robert Patrick/R7/USEPA/US@EPA
Date: 09/27/2010 10:50 AM
Subject: Sunflower-related letter

Raj,

Just FYI on a letter our RA is sending out this week in response to a Sierra Club request for EPA to "play a more active role" in Kansas' permitting of a coal-fired power plant named Sunflower. This permit is expected to be issued in advance of Jan. 2, 2011, and is currently on public notice.

I don't think you will find the letter controversial at all, but if you have any questions or concerns please let us know asap.

Thanks!



SWu-RP Edits (Clean) Earthjustice (b)



Sunflower SC Letter Karl Brooks 9-20-10.pdf

Rebecca
Weber/R7/USEPA/US
09/16/2011 11:49 AM

To Janet McCabe
cc
bcc
Subject Fw: Sunflower Air Permit -- Section 167 Objection

asking again about the whole stay issue which of course relates to 18 mos ext

[REDACTED]

[REDACTED]

----- Forwarded by Karl Brooks/R7/USEPA/US on 09/15/2011 09:00 AM -----

From: Catherine Hamborg <chamborg@earthjustice.org>
To: Karl Brooks/R7/USEPA/US@EPA
Cc: "Jeffrey A. Chanay" <jeff.chanay@ksag.org>, "Steve R. Fabert" <steve.fabert@ksag.org>, Robert Moser <rmoser@kdheks.gov>
Date: 09/14/2011 03:15 PM
Subject: Sunflower Air Permit -- Section 167 Objection

Attached for your review is a letter and attachments from Amanda W. Goodin and Todd D. True on behalf of the Sierra Club regarding Section 167 Objection – Unlawful Permit for Sunflower Coal Plant. A hard copy will follow in the mail to Mr. Brooks only.

Cathy Hamborg
Secretary
Earthjustice
705 Second Ave., Suite 203
Seattle, WA 98104
T: 206-343-7340 ext. 1031
F: 206-343-1526
www.earthjustice.org

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*please consider the environment before printing Letter Karl Brooks 9-14-11.pdf



Letter Karl Brooks attach. 1 order granting application for stay.pdf



Letter Karl Brooks attach. 2 request for clarification.pdf



Letter Karl Brooks attach. 3 request for clarification response KDHE.pdf

Sharon
Cooperstein/DC/USEPA/US

07/20/2012 04:51 PM

To Peter South

cc Alan Rush, Amit Srivastava, Carlos Alfaro, Cindy Huang, Crystal Edwards, Don Zinger, Emily Atkinson, Gregory Green, Jean Walker, Johnetta Heilig, Joseph-J Dougherty, Kirsten King, Kristin Riha, Lala Alston, Maria Sanders, Mary Henigin, Mike Koerber, Phil Lorang

bcc

Subject Re: Fw: OGC/OAR discussion regarding project schedule for SSM SIP Call petition response project

Thank you, Pete. Have a great weekend, all!

Sharon Cooperstein
Special Assistant to the Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
ARN Room 5406
(202) 564-3277

Peter South

[I have attached the briefing materials in prep for...](#)

07/20/2012 04:40:10 PM

From: Peter South/RTP/USEPA/US
To: Carlos Alfaro/DC/USEPA/US@EPA, Don Zinger/DC/USEPA/US@EPA, Jean Walker/RTP/USEPA/US@EPA, Joseph-J Dougherty/DC/USEPA/US@EPA, Mary Henigin/DC/USEPA/US@EPA, Crystal Edwards/DC/USEPA/US@EPA, Peter South/RTP/USEPA/US@EPA, Maria Sanders/RTP/USEPA/US@EPA, Alan Rush/DC/USEPA/US@EPA, Cindy Huang/DC/USEPA/US@EPA, Kirsten King/DC/USEPA/US@EPA, Sharon Cooperstein/DC/USEPA/US@EPA, Gregory Green/RTP/USEPA/US@EPA, Lala Alston/RTP/USEPA/US@EPA, Emily Atkinson/DC/USEPA/US@EPA, Mike Koerber/RTP/USEPA/US@EPA, Amit Srivastava/DC/USEPA/US@EPA
Cc: Phil Lorang/RTP/USEPA/US@EPA, Kristin Riha/RTP/USEPA/US@EPA, Johnetta Heilig/RTP/USEPA/US@EPA
Date: 07/20/2012 04:40 PM
Subject: Fw: OGC/OAR discussion regarding project schedule for SSM SIP Call petition response project

I have attached the briefing materials in prep for the SSM SIP call meeting on Monday. Please call me or Phil Lorang with any questions. Thanks

[attachment "ssm schedule 7_23_12.docx" deleted by Sharon Cooperstein/DC/USEPA/US]

Pete South
Office of Air Quality Planning and Standards/IO
Office of Air and Radiation
U.S. EPA
Phone: 919 541-5359
Cell: 919 599-7213

----- Forwarded by Peter South/RTP/USEPA/US on 07/20/2012 04:34 PM -----

OGC/OAR discussion regarding project schedule for SSM SIP Call petition response project

Mon 07/23/2012 3:00 PM - 4:00 PM

Chair: **Janet McCabe/DC/USEPA/US**
Sent By: **Emily Atkinson/DC/USEPA/US**

Location: ARN5428 [REDACTED]; Rooms: ARN-OAR-Room-5428/DC-ARN-OAR@EPA
Code: [REDACTED]

Required:	Anna Wood/RTP/USEPA/US@EPA, Apple Chapman/DC/USEPA/US@EPA, Avi Garbow/DC/USEPA/US@EPA, Charlie Garlow/DC/USEPA/US@EPA, Geoffrey Wilcox/DC/USEPA/US@EPA, Kevin McLean/DC/USEPA/US@EPA, Krishna Viswanathan/RTP/USEPA/US@EPA, Mike Koerber/RTP/USEPA/US@EPA, Phil Lorang/RTP/USEPA/US@EPA, Rich Damberg/RTP/USEPA/US@EPA, Sara Schneeberg/DC/USEPA/US@EPA
Optional:	Amit Srivastava/DC/USEPA/US@EPA, Jean Walker/RTP/USEPA/US@EPA, Johnetta Heilig/RTP/USEPA/US@EPA, Lala Alston/RTP/USEPA/US@EPA, Maria Sanders/RTP/USEPA/US@EPA, Sharon Cooperstein/DC/USEPA/US@EPA

Description

OAR Meeting Request Form

Requesting Meeting/Conference Call with: Janet McCabe

Date of this Request: 7/18/2012

Point of Contact (Name/Number): Phil Lorang (919) 541-5463

Title of Meeting: OGC/OAR discussion regarding project schedule for SSM SIP Call petition response project

Purpose of Meeting: Prepare to negotiate a needed deadline extension for EPA under a Settlement Agreement—one that EPA entered into with plaintiffs Sierra Club and WildEarth Guardians (executed 11/30/11).

[REDACTED]

Priority Status (check one) Critical Less Immediate

Last possible date for meeting: Friday, July 20, 2012.

If the meeting is critical, please explain why: [REDACTED]

Location of Meeting: ARN 5401A and conference call in OAQPS RTP.

Length of Meeting: 1 hour

DATES TO AVOID: July 16, July 17, and the morning of July 18.

Key Participants:

<u>Office/Organization</u>	<u>Name</u>
OGC	Avi Garbow*
OGC	Kevin McLean*
OGC	Geoffrey Wilcox*
OGC	Sara Schneeberg*
OAQPS	Mike Koerber*
OAQPS	Anna Wood*
OAQPS	Phil Lorang*
OAQPS	Krishna Viswanathan*
OAQPS	Rich Damberg*

Shela
Poke-Williams/DC/USEPA/US

To: Beth Craig
cc: Don Zinger

08/06/2009 09:59 AM

bcc
Subject: Re: Fw: Gina's schedule

Scheduling and rescheduling of the meeting(s) are being worked on. Thank you for your concern.

Shela Poke-Williams
Staff Assistant
Office of Air & Radiation
202-564-1850

Beth Craig

Dear Shela, An update. We have not yet heard f...

08/06/2009 08:22:32 AM

From: Beth Craig/DC/USEPA/US
To: poke-williams.shela@epa.gov
Cc: zinger.don@epa.gov
Date: 08/06/2009 08:22 AM
Subject: Fw: Gina's schedule

Dear Shela,

An update. We have not yet heard from the Utah delegation so we don't know when and where that meeting will take place. Josh is waiting to hear back.

Were you successful in moving the Smart Growth meeting?

Thanks, Beth

----- Forwarded by Beth Craig/DC/USEPA/US on 08/06/2009 08:21 AM -----

From: Beth Craig/DC/USEPA/US
To: poke-williams.shela@epa.gov
Cc: zinger.don@epa.gov
Date: 08/03/2009 06:22 PM
Subject: Gina's schedule

Dear Shela,

(b) (5)

(b)
(5)

(b) (5) [Redacted]

[Redacted]

4. I realize that you received a request for EarthJustice and Sierra Club to meet with Gina (b) (5) [Redacted]

Thanks, Beth

04:30 PM 05:00 PM

The Administrator's Meeting with the American Lung Association's CEO
and President, Charles D. Connor
Location: The Bullet Room

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Steven
Bradbury/DC/USEPA/US
04/12/2012 06:13 PM

To "Jim Jones"
cc
bcc
Subject Fw: In Re Pesticide Action Network North America and
Natural Resources Defense Council, Inc. Petition for a Writ of
Mandamus

As we discussed at the ogc general - just moved a bit quicker.

Sent by EPA Wireless E-Mail Services.
Mark Dyner

----- Original Message -----

From: Mark Dyner
Sent: 04/12/2012 06:07 PM EDT
To: Robert Perlis; Leslye Fraser; William Jordan; Richard Keigwin; Steven
Bradbury; Joel Wolf; Tom Myers; Douglas Parsons
Subject: Fw: In Re Pesticide Action Network North America and Natural
Resources Defense Council, Inc. Petition for a Writ of Mandamus
Here is NRDC's & PANNA's refiling of their unreasonable delay case in the 9th Circuit. As most of you know, this has been in the works once they came to the conclusion (following their 2,4-D filing) that they had improperly filed this case in district court in New York. I have no indication that this represents any change in position on their part. As you know, we've been engaged in settlement discussions with them for several months and I would expect that to continue.

I can't say whether they'll be any press on this. But I think we can say that we are aware they have filed a mandamus petition in the 9th Circuit seeking that we respond to their petition to revoke all tolerances and cancel all registrations for the insecticide chlorpyrifos. This filing is consistent with a similar action plaintiffs filed in the Southern District of New York in 2010. We have been working diligently to address plaintiffs' revocation and cancellation petition and have been in active discussions with them for over a year regarding the timing of our response.

Mark

----- Forwarded by Mark Dyner/DC/USEPA/US on 04/12/2012 05:54 PM -----

From: Catherine Hamborg <chamborg@earthjustice.org>
To: "michael.byars@usdoj.gov" <michael.byars@usdoj.gov>, Mark Dyner/DC/USEPA/US@EPA
Date: 04/12/2012 05:52 PM
Subject: In Re Pesticide Action Network North America and Natural Resources Defense Council, Inc.
Petition for a Writ of Mandamus

Attached are the following documents that were filed in the Ninth Circuit Court of Appeals today:

1. Petition for a Writ of Mandamus and for Relief From Unreasonably Delayed Agency Action by the Environmental Protection Agency;
2. Declaration of Sharon Bolton in Support of Petition for a Writ of Mandamus;
3. Declaration of Sattie Clark in Support of Petition for a Writ of Mandamus;
4. Declaration of Linda Lopez in Support of Petition for a Writ of Mandamus;
5. Declaration of Luis Medellin in Support of Petition for a Writ of

Mandamus;

6. Declaration of Margaret Reeves in Support of Petition for a Writ of Mandamus; and

7. Declaration of Jennifer Sass in Support of Petition for a Writ of Mandamus.

If you have any questions regarding this filing, please contact Kevin E. Regan or Kristen L. Boyles at Earthjustice.

Cathy Hamborg
Secretary
Earthjustice
705 Second Ave., Suite 203
Seattle, WA 98104
T: 206-343-7340 ext. 1031
F: 206-343-1526
www.earthjustice.org

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please consider the environment before printing* **Petition writ of mandamus.pdf Declaration Sharon Bolton.pdf



Declaration Sattie Clark.pdf Declaration Linda Lopez.pdf Declaration Luis Medellin.pdf



Declaration Margaret Reeves.pdf Declaration Jennifer Sass.pdf

**Gina
McCarthy/DC/USEPA/US**
Sent by: Teri Porterfield

10/28/2009 09:44 AM

To: Don Zinger
cc
bcc
Subject: Do we need to set something up??
Fw: Air Toxics Budget Letter

----- Forwarded by Teri Porterfield/RTP/USEPA/US on 10/28/2009 09:43 AM -----

From: Steve Page/RTP/USEPA/US
To: Gina McCarthy/DC/USEPA/US@EPA
Date: 10/28/2009 08:59 AM
Subject: Re: Fw: Air Toxics Budget Letter

Gina,
In case the Administrator raises this with you.....

(b) (5)
(b) (5)



Gina McCarthy

I guess we should set up a time to talk. ----- Orig...

10/28/2009 12:14:08 AM

From: Gina McCarthy/DC/USEPA/US
To: "Don Zinger" <Zinger.Don@EPA.GOV>
Cc: "Steve Page" <Page.Steve@Epa.GOV>, "Beth Craig" <Craig.Beth@EPA.GOV>
Date: 10/28/2009 12:14 AM
Subject: Fw: Air Toxics Budget Letter

I guess we should set up a time to talk.

From: Emma Cheuse [echeuse@earthjustice.org]
Sent: 10/27/2009 01:39 PM MST
To: Gina McCarthy
Cc: James Pew <jpew@earthjustice.org>; "eschaeffe@environmentalintegrity.org" <eschaeffe@environmentalintegrity.org>; "Walke, John" <jwalke@nrdc.org>; 'Marti Sinclair' <mjsinclair@fuse net>; Ed Hopkins <Ed.Hopkins@sierraclub.org>
Subject: Air Toxics Budget Letter

October 27, 2009

Dear Assistant Administrator McCarthy:

Recognizing your commitment to protect public health and the environment, we are writing to bring to your attention serious concerns about the prior Administration's allocation of resources for the air toxics program.

The attached letter, sent today from Earthjustice, the Natural Resources Defense Council, the Environmental Integrity Project, and the Sierra Club, describes these concerns.

We would welcome the opportunity to meet and discuss the importance of providing full support to the air toxics program, at your convenience.

Thank you.

Best regards,
Emma Cheuse

Emma Cheuse
Associate Attorney
Earthjustice
1625 Massachusetts Avenue, N.W. Suite 702
Washington, DC 20036
T: 202-667-4500 ext. 224
F: 202-667-2356
www.earthjustice.org

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[attachment "Air Toxics Budget Letter-10.27.09.pdf" deleted by Steve Page/RTP/USEPA/US]

Tom Kelly/DC/USEPA/US
08/06/2009 09:37 AM

To: Barnes Johnson
cc: Beth Craig, Jonathan Edwards
bcc:
Subject: Re: Fw: Action Needed: Fw: ltr from environmental grps

Yes, she is the first-listed addressee. Others are Mathy Stanislaus, Peter Silva, Scott Fulton, Pat Hirsch, and USEPA as an entity.

Barnes Johnson FYI - do you know if Gina also received this lette... 08/06/2009 09:31:26 AM

From: Barnes Johnson/DC/USEPA/US
To: Beth Craig/DC/USEPA/US@EPA, Tom Kelly/DC/USEPA/US@EPA, Jonathan Edwards/DC/USEPA/US@EPA
Date: 08/06/2009 09:31 AM
Subject: Fw: Action Needed: Fw: ltr from environmental grps

FYI - do you know if Gina also received this letter? Looks like we need some cross office coordination going forward.

Barnes Johnson
Environmental Protection Agency
Office of Air and Radiation
1200 Pennsylvania Avenue, NW
Mail Code: 6101A
Washington, DC 20460
202-564-7400

----- Forwarded by Barnes Johnson/DC/USEPA/US on 08/06/2009 09:29 AM -----

From: James Woolford/DC/USEPA/US
To: Barnes Johnson/DC/USEPA/US@EPA
Date: 08/06/2009 08:57 AM
Subject: Fw: Action Needed: Fw: ltr from environmental grps

No doubt this will be lingering when you get back.

Sent from my BlackBerry Wireless Handheld
Jennifer Wilbur

----- Original Message -----

From: Jennifer Wilbur
Sent: 08/06/2009 08:52 AM EDT
To: Elizabeth Southerland; Phyllis Anderson; Arnold Layne; Jeff Heimerman; Suzanne Wells; Kevin Garrahan; Stuart Walker
Cc: Thea Johnson; James Woolford
Subject: Action Needed: Fw: ltr from environmental grps

All,

Below is a 225 page "letter" from a consortium of environmental groups to the AAs for OAR, OW, OSWER, OGC, and Deputy Administrator. The primary focus is on OAR/ORIA and their "proposed revision to EPA's Protective Action Guides (PAGs) for radiological releases." The consortium includes the Center for Health, Environment & Justice, NRDC, Committee to Bridge the Gap, Sierra Club, and others. In the letter, it is mentioned that the proposed PAG revision for radiological releases would have "significant impacts for OSWER... ." "The Bush Administration's proposed PAG revisions would have permitted radioactivity concentrations in drinking water *orders of magnitude higher* than EPA's long-held drinking water standards under the Safe Drinking Water Act ... or the emergency drinking water standards

employed under CERCLA." The consortium appears to believe that, despite the current Administration's pull-back for additional review, there are EPA staff who would encourage these to go forward.

ACTION NEEDED: Mathy has asked for "background on OSWER issues raised by this letter." Please review and provide the issues raised, any background information or interactions we've had on this issue or with these groups related to this issue. Please provide the information to Thea and me by Wednesday, August 12th.

Also, please forward to appropriate staff as needed.

Thanks!

Jennifer

Jennifer Millett Wilbur
Special Assistant
Office of Superfund Remediation and Technology Innovation
Office of Solid Waste and Emergency Response
US Environmental Protection Agency
1200 Pennsylvania Ave., NW MC 5201P
Washington, DC 20460
(703) 603-8778

----- Forwarded by Jennifer Wilbur/DC/USEPA/US on 08/06/2009 07:46 AM -----

From: James Woolford/DC/USEPA/US
To: Jennifer Wilbur/DC/USEPA/US@EPA
Date: 08/05/2009 07:31 PM
Subject: Fw: ltr from environmental grps

Pls print out and share w/appropriate staff.

Sent from my BlackBerry Wireless Handheld
Mathy Stanislaus

----- Original Message -----

From: Mathy Stanislaus
Sent: 08/05/2009 06:04 PM EDT
To: James Woolford; Matt Straus; Matt Hale
Cc: Ellen Manges; Antoinette Powell-Dickson
<powell-dickson.antoINETte@epa.gov>; Ellyn Fine; Barry Breen
Subject: Fw: ltr from environmental grps

Jim, Matt, & Matt: Please see the issues raised in this letter. Assuming that I meet with the group - please provide background on the OSWER issues raised in this letter - sometime in the next week or so would be find.

----- Forwarded by Mathy Stanislaus/DC/USEPA/US on 08/05/2009 06:01 PM -----

From: Daniel O Hirsch <cbghirsch@aol.com>
To: Mathy Stanislaus/DC/USEPA/US@EPA
Date: 08/05/2009 01:31 PM
Subject: ltr from environmental grps

Dear Assistant Administrator Stanislaus,

Please find attached a letter to you from the Center for Health, Environment & Justice; Clean Water Action; Committee to Bridge the Gap; Environment America; Food and Water Watch; Friends of the Earth; Greenpeace; Massachusetts Citizens for Safe Energy; Natural Resources Defense Council; Nuclear Information and Resource Service; Professor Richard Clapp; Public Citizen; and the Sierra Club.

The letter calls to your attention a number of troubling proposals by the prior Administration to weaken environmental protections, initiatives that remain under consideration within EPA, and requests a meeting with you to discuss them.

The letter contains supporting attachments about these matters.

If you have trouble opening the file, or have any questions, please feel free to contact me at (831) 336-8003.

Sincerely,

Daniel Hirsch
Committee to Bridge the Gap

[attachment "080509LetterToEPA.pdf" deleted by Tom Kelly/DC/USEPA/US]

Tom Kelly/DC/USEPA/US
08/14/2009 05:12 PM

To: Beth Craig
cc
bcc
Subject: Re: Fw: Information Update - Description has changed: The Administrator's Meeting with the American Lung Association's CEO and President, Charles D. Connor

Thanks, Beth. I appreciate your looking out for me (as in Gene Durman's contact earlier today. As for the ALA meeting, it's on my calendar.

Beth Craig Tom, Looks like should be invited to this, Beth ---... 08/14/2009 04:54:03 PM

From: Beth Craig/DC/USEPA/US
To: "Tom Kelly" <kelly.tom@epa.gov>
Date: 08/14/2009 04:54 PM
Subject: Fw: Information Update - Description has changed: The Administrator's Meeting with the American Lung Association's CEO and President, Charles D. Connor

Tom, Looks like should be invited to this, Beth

Sent by EPA Wireless E-Mail Services
Daniel Gerasimowicz

----- Original Message -----

From: Daniel Gerasimowicz
Sent: 08/14/2009 04:48 PM EDT
To: Beth Craig; Brian Mclean; Dina Kruger; Elizabeth Cotsworth; Gina McCarthy; Jeffrey Clark; Lydia Wegman; Margo Oge; Rob Brenner
Cc: Barbara Morris; Gladys Bryant-Akers; Jean Walker; Shela Poke-Williams; Stephanie Washington; Teri Porterfield; Tina Murphy
Subject: Information Update - Description has changed: The Administrator's Meeting with the American Lung Association's CEO and President, Charles D. Connor

The Call-in number for individuals in RTP will be:

██████████

████████████████████

Mr. Connor will be accompanied by:

Paul Billings, Vice President of National Policy and Advocacy
Janice Nolen, Assistant Vice President of National Policy and Advocacy

Topics of discussion will include issues of outdoor and indoor air pollution:

- securing a more protective NAAQS, especially for ozone and PM
- protecting local community health from power plant pollution as CAIR is revamped
- beginning work on Tier III controls for motor vehicles and enhanced diesel retrofits
- retaining a focus on human health impacts - climate and energy issues
- enhancing joint ALA/EPA work on indoor air, especially around asthma triggers, secondhand smoke and radon

Thank you.

Venu Ghanta/DC/USEPA/US
12/15/2011 07:24 PM

To Janet McCabe
cc
bcc
Subject PLEASE REVIEW: Remaining signature items for 2011

Janet-Please take a look and mark up as needed. I have excluded MATS and Secondary Lead for obvious reasons. I always marvel at how the regulatory timelines differ for OAQPS versus the other offices...

Thanks, Venu

[Redacted]

Response to Sierra Club Petition regarding Ozone and PM Modeling

Status: Currently under development

Deadline: Must be signed by 12/21

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Victoria Drew/DC/USEPA/US
03/13/2009 06:51 PM

To Anna Duncan, Elizabeth Cotsworth, Barnes Johnson
cc
bcc

Subject IGMS - Requested Commitment Notice Document Approval:
XA-83311901-3: American Lung Association

You have been requested to review and approve or reject the content of the Commitment Notice Document Titled: American Lung Association. Due Date: 03/16/2009



Victoria Drew/DC/USEPA/US

03/16/2009 12:19 PM

To Barnes Johnson

cc

bcc

Subject IGMS - Requested Commitment Notice Document Approval:
XA-83311901-3: American Lung Association

You have been requested to review and approve or reject the content of the Commitment Notice Document Titled: American Lung Association. Due Date: 03/16/2009



Victoria
Rivas-Vazquez/DC/USEPA/US

01/30/2013 05:23 AM

To John Millett

cc Alisha Johnson, David Bloomgren, Cathy Milbourn, Julia Valentine

bcc

Subject Re: 1/30,11am Media Event/American Lung Association

Can someone from OAR or OMR listen in on the 11am tele briefing?

-----John Millett/DC/USEPA/US wrote: -----

To: Alisha Johnson/DC/USEPA/US@EPA, Victoria Rivas-Vazquez/DC/USEPA/US@EPA, David Bloomgren/DC/USEPA/US@EPA

From: John Millett/DC/USEPA/US

Date: 01/29/2013 05:06PM

Subject: 1/30: Media Event/American Lung Assoc

11 am - - Tier 3 related -- Media Alert attached below --

Tier 3 went over to OMB today, so it's apt to appear on OMB's web site as "under review" --

We typically say something like --

"The proposal is under interagency review, and the agency will issue it once that review is complete."

~~~~~

John Millett  
Office of Air and Radiation Communications  
U.S. Environmental Protection Agency  
5411 Ariel Rios Building North  
Washington, DC 20460  
Phone: 202/564-2903  
Cell: 202/510-1822

----- Forwarded by John Millett/DC/USEPA/US on 01/29/2013 04:55 PM -----

From: Justin Cohen/DC/USEPA/US

To: Julia Valentine/DC/USEPA/US@EPA, John Millett/DC/USEPA/US@EPA

Cc: Cathy Milbourn/DC/USEPA/US@EPA, Nate McMichael/DC/USEPA/US@EPA, Tricia Lynn/DC/USEPA/US@EPA

Date: 01/29/2013 04:02 PM

Subject: Fw: Media Event/American Lung Assoc

---

heads-up on an email to agency management about a 1/30 press event -- looks Tier 3 related....

Justin Cohen  
U.S. Environmental Protection Agency  
Office of Transportation and Air Quality

phone: (202) 564-1643  
fax: (202) 564-1686

----- Forwarded by Justin Cohen/DC/USEPA/US on 01/29/2013 04:00 PM -----

From: Tanya Meekins/DC/USEPA/US  
To: Justin Cohen/DC/USEPA/US@EPA, Christopher Mylan/DC/USEPA/US@EPA  
Date: 01/29/2013 03:55 PM  
Subject: Media Event/American Lung Assoc

---

FYI

*(See attached file: Paul Billings\_media briefing.pdf)*

Tanya Meekins  
Office of Transportation  
and Air Quality  
202-564-6002 (office)  
202-564-1686(fax)

[attachment "Paul Billings\_media briefing.pdf" removed by Victoria Rivas-Vazquez/DC/USEPA/US]

Wanda Farrar/DC/USEPA/US  
09/07/2011 09:53 AM

To Alan Rush, Chebryll Edwards, Deborah Banks, Dennis OConnor, Jeremy Arling, Joseph-J Dougherty, Karen Orehowsky, Laura Bunte, Margaret Sheppard, Mary Henigin, Meg Victor, Pam Long, Pat Scoville, Raymond Lee, Ruthw Morgan, Teresa Clemons, Regina Chappell, Anna Wood, Antoine Hughes, Barbara Morris, Carey Fitzmaurice, Carl Mazza, Catrice Jefferson, Ellen Kurlansky, Eunice Javis, Holly Wilson, Jeneva Craig, Jim Ketcham-Colwill, Joseph Morris, Keith Mason, Larry Weinstock, Marva King, Maureen Delaney, Nancy Ketcham-Colwill, Rob Brenner, Sabrina Johnson, Terry Keating, Wil Wilson, Kelly Hayes, Tom Eagles, Lorie Schmidt

cc

bcc

Subject September 2011 Tiering Exercise

There are 8 actions being tiered and 1 tier change request for the month of September.

Please review the attached tiering forms to identify whether your office would like to participate. You should provide the title and SAN of the rule, as well as, the workgroup participant's name to me by Tuesday, September 20, 2011. Thanks.

(b) (5) [Redacted]  
[Redacted] 

[Redacted]  
[Redacted] 

[Redacted]  
[Redacted] 

[Redacted]  
[Redacted] 

OAR - Tier 3 - SAN 5585: Completeness Determination of a Sierra Club Petition to List H2S as a Hazardous Air Pollutant  
Link-> 

(b) (5) [Redacted]  
[Redacted] 

[Redacted]  
[Redacted] 

[Redacted]  
[Redacted] 

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

(b) (5)

[Redacted text block]

Wendy Blake/DC/USEPA/US  
09/04/2012 09:48 AM

To: Joseph Goffman  
cc: Patricia Embrey  
bcc:  
Subject: Fw: Courtesy copy: Notice of citizen suit on Refineries air toxics residual risk and technology review (RTR)

Joe,

Below is Emma Cheuse's email (Sierra Club counsel) transmitting the notice of intent (NOI) to sue regarding our failure to conduct a residual risk and technology review of the refineries rules (b) (5)

Sierra Club and EIP can file suit later this month (60 days after 7/18/12, the date of the NOI), (b) (5)

Wendy

----- Forwarded by Wendy Blake/DC/USEPA/US on 09/04/2012 09:17 AM -----

From: Emma Cheuse <echeuse@earthjustice.org>  
To: Amy Branning/DC/USEPA/US@EPA, Wendy Blake/DC/USEPA/US@EPA  
Cc: James Pew <jpew@earthjustice.org>  
Date: 07/18/2012 03:06 PM  
Subject: Courtesy copy: Notice of citizen suit on Refineries air toxics RTR

Hi Amy and Wendy,

Jim and I just wanted to send you a courtesy copy of the new notice letter we sent today via certified mail on EPA's Refineries RTR. Please see attached.

We and our co-counsel (Environmental Integrity Project) would welcome the opportunity to talk with EPA soon about this.

Best,  
Emma

---

Emma Cheuse  
Senior Associate Attorney  
Earthjustice  
1625 Massachusetts Avenue, N.W. Suite 702  
Washington, DC 20036-2243  
T: 202-745-5220 or 202-667-4500 ext. 5220  
F: 202-667-2356

[www.earthjustice.org](http://www.earthjustice.org)

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\*Please consider the environment before printing.



Refineries Notice Letter 7-18-2012.pdf



[REDACTED] [REDACTED]

[REDACTED]

04:30 PM 05:00 PM

The Administrator's Meeting with the American Lung Association's CEO and President, Charles D. Connor

*Location:* The Bullet Room

*Required Invitees:* Beth Craig, Brian Mclean, Diane Thompson, Dina Kruger, Elizabeth Cotsworth, Gina McCarthy, Jeffrey Clark, Lydia Wegman, Margo Oge, Rob Brenner

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]