

January 25, 2018

SUBMITTED ELECTRONICALLY

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667

Re: Freedom of Information Act Request for Records Concerning EPA's Review of the Clean Power Plan in Accordance with Executive Order 13783

Dear National Freedom of Information Officer:

Environmental Defense Fund (“EDF”) respectfully requests records, as that term is described at 5 U.S.C. § 552(f)(2) of the Freedom of Information Act (“FOIA”), of the U.S. Environmental Protection Agency (“EPA” or the “Agency”).

As used in this request:

- “CPP EO Review” means the review of the Clean Power Plan that EPA conducted in accordance with Executive Order 13783.¹
- “Correspondence” includes hard-copy and electronic correspondence including, but not limited to, emails, voice mails, text messages, and correspondence transmitted through any other electronic platform. Correspondence is between two individuals whenever both individuals are included among the senders and/or recipients,² regardless of who else may be included.

Specifically, EDF requests all records relating to the CPP EO Review, including:

- Records presenting or describing the “outcome” of the CPP EO Review referenced in the proposal to repeal the Clean Power Plan;³

¹ In EPA’s proposal to repeal the Clean Power Plan, the Agency states that it conducted a review pursuant to Executive Order 13783, and on the basis of that review, it decided to propose to repeal the Clean Power Plan. *See* EPA, “Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units,” 82 Fed. Reg. 48,035, 48,036 (proposed Oct. 16, 2017).

² Recipients would also include any individual who is cc’d or bcc’d on any correspondence.

³ *See* 82 Fed. Reg. at 48,036 (“In accordance with Executive Order 13783 . . . the EPA has reviewed the CPP and is initiating this action *based on the outcome of that review.*”) (emphasis added).

- To the extent not covered above, any work product, such as assessments, analyses, or recommendations, produced in the course of, or resulting from, the CPP EO Review;
- All scheduling information (e.g., calendar entries or invites), agendas, and participant lists of all meetings at which the CPP EO Review was discussed;
- Records describing EPA’s plan or strategy for conducting the CPP EO Review, including records discussing what documents or other information EPA analyzed as part of its review;
- All correspondence to or from external parties relating to the CPP EO Review, i.e., all correspondence that has *any* non-EPA party as a sender or recipient, including but not limited to all correspondence sent to or received from the Executive Office of the President.

EDF respectfully seeks records produced, modified, or transmitted since March 28, 2017 that exist as of the date that EPA begins searching for records responsive to this request. Additionally, EDF requests that EPA search the records of all EPA Staff members who participated in the CPP EO Review, including political appointees.

If any of the information sought in this request is deemed by EPA to be properly withheld under a FOIA exemption, 5 U.S.C. § 552(b), please provide EDF with an explanation, for each such record or portion thereof, sufficient to identify the record and the particular exemption(s) claimed.

Request for Expedited Processing

EDF respectfully seeks expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(i) and 40 C.F.R. § 2.104(e)(1)(ii), which applies when there is “[a]n urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person primarily engaged in disseminating information to the public.” With respect to five other FOIA requests, EPA recently recognized EDF’s eligibility for expedited processing on this basis.⁴ In support of this request for expedited processing, I certify that the following information is true and correct to the best of my knowledge and belief:

- (1) EDF engages in extensive, daily efforts to inform the public about matters involving environmental policy. For example, EDF has multiple channels for distributing information to the public, including through direct communication with its more than 2 million members, press releases, blog posts, active engagement on social media, and frequent appearances by staff in major media outlets.⁵

⁴ See Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ2017-003545 (Feb. 23, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-005587 (Apr. 12, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-008622 (July 7, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-009283 (July 13, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-009579 (July 26, 2017).

⁵ See, e.g., Victoria Mills, *Three Reasons for Companies to Defend the Clean Power Plan Now*, EDF+Business Blog (Nov. 17, 2017) <http://business.edf.org/blog/2017/11/17/3-reasons-for-companies-cpp/>; Martha Roberts, *Trump’s EPA is Making a Reckless and Dangerous Decision, Here’s What You Need to Know*, EDF Blogs (Oct. 9, 2017), <https://www.edf.org/blog/2017/10/09/trumps-epa-making-reckless-and-damaging-decision-heres-what-you-need-know>; Timothy Cama, *EPA to Propose to Repeal Clean Power Plan*, The Hill, (Oct. 9, 2017) (quoting EDF President Fred Krupp), <http://thehill.com/policy/energy-environment/overnights/354615-overnight-energy-epa-to-propose-clean-power-plan-repeal>; Rama Zakaria and Ben Levitan, *Underhanded Maneuvers To Repeal the Clean*

- (2) The recently released Climate Science Special Report from the U.S. Global Change Research Program observed that, in recent years, the evidence “for continuing, rapid, human-caused warming of the global atmosphere and ocean” has grown “stronger,” and that “[t]he last few years have also seen record-breaking, climate-related weather extremes, the three warmest years on record for the globe, and continued decline in arctic sea ice. These trends are expected to continue.”⁶
- (3) The Climate Science Special Report “conclude[d], based on extensive evidence, that it is extremely likely that **human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th century.** For the warming over the last century, there is no convincing alternative explanation supported by the extent of the observational evidence.”⁷
- (4) The Clean Power Plan is the first and only federal limit on carbon pollution from existing power plants, and represents “a significant step forward in reducing greenhouse gas (GHG) emissions in the U.S.”⁸
- (5) On October 16, 2017, EPA proposed to repeal the Clean Power Plan.⁹ In the Agency’s proposed repeal, EPA states that, “In accordance with Executive Order 13783, 82 FR 16093 (March 31, 2017), the EPA has reviewed the CPP and is initiating this action based on the outcome of that review.” However, EPA did not include any documents relating to this review in the docket for the proposed repeal.
- (6) EPA’s proposal to repeal the Clean Power Plan is a topic of intense public interest. There was widespread news coverage of,¹⁰ and intense public reaction to, the proposal. EPA’s administrative docket on this matter has received over 325,000 comments so far.¹¹

Power Plan Put Americans’ Lives and Health At Risk, (Oct. 9, 2017), <http://blogs.edf.org/climate411/2017/10/09/underhanded-maneuvers-to-repeal-the-clean-power-plan-put-americans-lives-and-health-at-risk/>; Charlie Jiang, *Climate and Clean Energy Progress Continues in Spite of Clean Power Plan Repeal*, EDF Blogs (Oct. 6, 2017), <http://blogs.edf.org/energyexchange/2017/10/06/climate-and-clean-energy-progress-continues-in-spite-of-clean-power-plan-repeal-rumors/>.

⁶ U.S. Glob. Change Research Prog., *Climate Science Special Report: Fourth National Climate Assessment, Vol. 1*, at 12 (2017).

⁷ *Id.* (emphasis in original).

⁸ EPA, “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units,” 80 Fed. Reg. 64,662, 64,663 (Oct. 23, 2015).

⁹ See 82 Fed. Reg. 48,035.

¹⁰ See e.g., Lisa Friedman and Brad Plumer, *EPA Announces Repeal of Major Obama-Era Carbon Emissions Rule*, N.Y. Times, (Oct. 9, 2017), https://www.nytimes.com/2017/10/09/climate/clean-power-plan.html?_r=0; Juliet Eilperin, *EPA’s Pruitt Signs Proposed Rule to Unravel Clean Power Plan*, Washington Post, (Oct. 9, 2017) https://www.washingtonpost.com/politics/epas-pruitt-signs-proposed-rule-to-unravel-clean-power-plan/2017/10/10/96c83d2c-add2-11e7-a908-a3470754bbb9_story.html?utm_term=.05b06910c6e8; Timothy Puko, *EPA to Withdraw Power Plant Rules*, Wall Street Journal (Oct. 9, 2017), <https://www.wsj.com/articles/epa-to-withdraw-power-plant-rules-1507580639>; Oliver Milman, *Fightback Begins over Trump’s ‘Illegal and Irresponsible’ Clean Power Plan Repeal*, The Guardian (Oct. 10, 2017) <https://www.theguardian.com/environment/2017/oct/10/trump-climate-change-clean-power-plan-fightback>.

¹¹ See Docket ID EPA-HQ-OAR-2017-0355, Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Utility Generating Units, <https://www.regulations.gov/docket?D=EPA-HQ-OAR-2017-0355>.

- (7) However, commenters on the proposed repeal suffer a distinct disadvantage: they have virtually no information about the CPP EO Review upon whose outcome EPA's action was "based." Nor do they have any assurance that the CPP EO Review was conducted in an objective manner.
- (8) The comment deadline for the proposed repeal of the Clean Power Plan is currently April 26, 2018.¹² The public's opportunity to engage in a public, transparent administrative process could be significantly prejudiced if EPA does not disclose records relating to the CPP EO Review with enough time for the public to review and comment upon them.

Request for Fee Waiver

As a non-partisan, non-profit organization that provides information that is in the public interest, EDF respectfully requests a waiver of fees associated with this request. We are not seeking information for any commercial purpose and the records received will contribute to a greater public understanding of issues of considerable public interest: the proposed repeal of the only federal limits on carbon pollution from the nation's largest stationary source of greenhouse gases. 5 U.S.C. § 552(a)(4)(A)(iii). EDF is well positioned to disseminate the records to the public, as we routinely issue press releases, action alerts, reports, analyses, and other public outreach materials. We fully intend to disseminate newsworthy information received in response to this request. Accordingly, we respectfully request that the documents be furnished without charge. *Id.*

For ease of administration and to conserve resources, we will accept documents produced in a readily accessible electronic format. In the event EDF's request for a fee waiver is denied or if you have any questions about this request, please contact me immediately by telephone at (202) 572-3318 or by email at blevitan@edf.org.

Respectfully submitted,

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Washington, DC 20009

¹² See EPA, *Electric Generating Units: Repealing the Clean Power Plan: Proposal*, <https://www.epa.gov/stationary-sources-air-pollution/electric-utility-generating-units-repealing-clean-power-plan-0> (last visited Jan. 25, 2018).