



April 9, 2020

SUBMITTED VIA FOIAONLINE

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 Related to EPA’s COVID-19 Enforcement and Guidance Policy

Dear National Freedom of Information Officer:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and applicable Environmental Protection Agency (“EPA”) regulations, 40 C.F.R. §§ 2.100–2.406, Environmental Defense Fund (“EDF”) respectfully requests copies of certain EPA records related to its recent guidance policy¹ regarding COVID-19 Implications for EPA’s Enforcement and Compliance Program (“Enforcement Guidance”).

Specifically, EDF requests records generated or transmitted since March 1, 2020, up through and including the date that you conduct your search for records. EDF requests all correspondence² between any EPA personnel—whether at Headquarters, a regional office, or any other office—and any External Party that addresses the topics described below related to the Enforcement Guidance. For the purposes of this request, “External Party” includes any person or entity who is not a part of a federal executive agency. This request includes correspondence where an External Party is the sender or appears anywhere among the recipients, including as a “cc” or

¹ Memorandum, COVID-19 Implications for EPA’s Enforcement and Compliance Program, from Susan Parker Bodine, Assistant Administrator, EPA Office of Enforcement and Compliance Assurance, to all of EPA’s governmental and private sector partners (March 26, 2020), <https://www.epa.gov/sites/production/files/2020-03/documents/ocamemooncovid19implications.pdf>.

² In accordance with 5 U.S.C. § 552(f)(2) (describing “record[s]”), EDF intends for “correspondence” to be broadly construed, and to include, without limitation, electronic and hardcopy communications, emails, text messages, voice mails, faxes, records of phone calls, records of meetings, meeting invitations, calendars, written notes, and correspondence transmitted through any electronic platform. This request expressly includes any attachments to responsive correspondence. This request encompasses correspondence that is or was on any computer, phone, smartphone, tablet, email account, cloud, server, or other communication system or device, either personal or business, that is or was owned or operated by any EPA personnel.

“bcc” recipient. EDF requests all correspondence between any EPA personnel and any External Party regarding the following topics:

- Impact of COVID-19 on regulated entities’ ability to comply with environmental or health standards
- Requests to EPA for enforcement or compliance relief (both before and after the March 26 announcement of the Enforcement Guidance)
- Questions to EPA related to the Enforcement Guidance
- Notifications to EPA that a regulated entity will fail to comply with environmental compliance obligations due to COVID-19

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.” 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 two million members, press releases, blog posts, active engagement on social media, and frequent appearances by staff in major media outlets.³

³ See, e.g., Daniel F. Becker and James Gerstenzang, *Climate Progress Stalls Again, Thanks to Trump’s New Auto Rules*, N.Y. Times (Apr. 1, 2020), <https://www.nytimes.com/2020/04/01/opinion/trump-fuel-efficiency-standards.html> (quoting EDF analysis); Sharon Lerner, *EPA is Jamming through Rollbacks that Could Increase Coronavirus Deaths*, The Intercept (Mar. 31, 2020), <https://theintercept.com/2020/03/31/epa-regulations-air-pollution-coronavirus/> (quoting Elena Craft, EDF Senior Director for Climate and Health); Jean Chemnick, *Science Board Won’t Review Looming Methane Rule*, E&E News (Apr. 1, 2020) <https://www.eenews.net/climatewire/stories/1062754229> (quoting Rosalie Winn, EDF attorney); Fact Sheet, Environmental Defense Fund, *Trump Administration Moves Ahead with Harmful Clean Cars Rollback* (Mar. 30, 2020), https://www.edf.org/sites/default/files/Cars_Final_Rollback_Factsheet.pdf;

- (2) The world is in the midst of a major public health crisis related to the COVID-19 global pandemic. As of April 7, 2020, there have been 1,425,015 confirmed cases with 81,410 deaths globally,⁴ with the number of cases doubling in the last week.⁵ As of April 7, 2020, the U.S. has seen 396,063 confirmed cases with 12,717 deaths.⁶
- (3) New research has demonstrated a link between worse air pollution and higher COVID-19 death rates.⁷ Moreover, air pollution most likely causes greater vulnerability to COVID-19 generally, including greater likelihood of infection and greater severity of illness.⁸
- (4) A failure by regulated entities to comply with their responsibilities regarding environmental and public health regulations promulgated by EPA implicates the public interest. This understanding animates many of the reporting requirements and citizen suit provisions of environmental statutes and regulations.
- (5) Further, many environmental statutes provide state and public accountability mechanisms,⁹ but for such accountability to be effective, state actors and the general public rely on timely information from EPA.¹⁰
- (6) In this time of crisis due to a pathogen with proven links between fatality and ambient air pollution, the public has an elevated interest in knowing about failures by regulated entities to comply with environmental protections because increased pollution may lead to increased risk of illness and fatality. Further, people need to use this information in

⁴ Daniel Wood, Stephanie Adeline, and Ruth Talbot, *Coronavirus World Map: Tracking the Spread of the Outbreak*, National Public Radio (last visited Apr. 7, 2020) <https://www.npr.org/sections/health-shots/2020/03/16/816707182/map-tracking-the-spread-of-the-coronavirus-in-the-u-s>.

⁵ William Feuer, *Worldwide Coronavirus Cases Reach 1 Million, Doubling in a Week as Death Toll Tops 50,000*, CNBC (Apr. 2, 2020) <https://www.cnbc.com/2020/04/02/worldwide-coronavirus-cases-reach-1-million-doubling-in-a-week.html>.

⁶ Elena Renkin and Daniel Wood, *Maps: Tracking the Spread of the Coronavirus in the U.S.*, National Public Radio (last visited Apr. 7, 2020) <https://www.npr.org/sections/health-shots/2020/03/16/816707182/map-tracking-the-spread-of-the-coronavirus-in-the-u-s>.

⁷ Lisa Friedman, *New Research Links Air Pollution to Higher Coronavirus Death Rates*, N.Y. Times (Apr. 7, 2020) <https://www.nytimes.com/2020/04/07/climate/air-pollution-coronavirus-covid.html>.

⁸ Tony Barboza, *Does Air Pollution Make You More Susceptible to Coronavirus? California Won't Like the Answer*, L.A. Times (Mar. 21, 2020) <https://www.latimes.com/california/story/2020-03-21/coronavirus-air-pollution-health-risk> (“There’s lots of evidence that air pollution increases the chances that someone will get pneumonia, and if they get pneumonia, will be sicker with it . . . We don’t have direct evidence of that with COVID, but I would be surprised if air pollution did not affect risk for COVID infection and the severity of illness,” quoting Aaron Bernstein, interim director of the Center for Climate, Health, and the Global Environment at the Harvard T.H. Chan School of Public Health).

⁹ See, e.g., 42 U.S.C. § 7604 (2020); 33 U.S.C. § 1365 (2020); 42 U.S.C. § 6972 (2020); 42 U.S.C. § 9659 (2020); 15 U.S.C. § 2619 (2012); 42 U.S.C. § 300j-8 (2020).

¹⁰ See Memorandum, COVID-19 Implications for EPA’s Enforcement and Compliance Program, from Susan Parker Bodine, Assistant Administrator, EPA Office of Enforcement and Compliance Assurance, to all of EPA’s governmental and private sector partners 3 (March 26, 2020), <https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf>.

real time to take measures to protect themselves from potentially increased pollution during this period of heightened vulnerability.

- (7) Indeed, the public, non-profit organizations, and members of Congress have had to divert attention from the intensifying COVID-19 crisis to focus on the Enforcement Guidance.¹¹ EPA has acknowledged the strong public opposition to the Enforcement Guidance by releasing several press releases and letters defending the Enforcement Guidance.¹²
- (8) EPA has so far refused to disclose the number of waivers requested by regulated entities, and it has been likewise non-responsive about when it might release this information.¹³
- (9) Given this intense public interest and EPA's failure to implement a transparent public process to share what regulatory violations are occurring and the agency may be waiving, it is especially important that the public have access to this information quickly so that

¹¹ See, e.g., Mike Soraghan and Corbin Hiar, *Agency Outlines Plans to Ease Enforcement during Pandemic*, E&E News (Mar. 26, 2020) <https://www.eenews.net/eenewspm/2020/03/26/stories/1062709381>; Lisa Friedman, *EPA, Citing Coronavirus, Drastically Relaxes Rules for Polluters*, N.Y. Times (Mar. 26, 2020) <https://www.nytimes.com/2020/03/26/climate/epa-coronavirus-pollution-rules.html?op19G=0038>; Kelsey Brugger, *EPA Won't Reveal Waivers*, E&E News (Apr. 3, 2020) <https://www.eenews.net/greenwire/2020/04/03/stories/1062777853>; Marianne Lavelle et al., *Trump's Move to Suspend Enforcement of Environmental Laws Is a Lifeline to the Oil Industry*, Inside Climate News (Mar. 27, 2020) <https://insideclimatenews.org/news/27032020/coronavirus-covid-19-EPA-API-environmental-enforcement>; Rebecca Beitsch, *House Democrats Blast EPA as Agency Suspends Monitoring Amid Coronavirus*, The Hill (Mar. 31, 2020) <https://thehill.com/policy/energy-environment/490449-house-democrats-blast-epa-as-agency-suspends-enforcement-of-usa-immediately-revoke-covid-19-suspension-of-environmental-protections>; USA: *Immediately Revoke COVID-19 Suspension of Environmental Protections*, Amnesty International (Mar. 27, 2020) <https://www.amnesty.org/en/latest/news/2020/03/usa-immediately-revoke-covid-19-suspension-of-environmental-protections/>; Dan Berman, *EPA Dials Back Enforcement during Pandemic*, Fox 10 TV (Mar. 26, 2020) https://www.fox10tv.com/news/coronavirus/epa-dials-back-environmental-enforcement-during-pandemic/article_e76be67f-b749-537d-a55d-8a9b4bbf390f.html.

¹² Press Release, EPA, *EPA Corrects the Record after Reckless Reporting on Temporary Compliance Guidance*, (Mar. 30, 2020) <https://www.epa.gov/newsreleases/epa-corrects-record-after-reckless-reporting-temporary-compliance-guidance>; Press Release, EPA, *EPA Sends Letter to All Members of Congress to Correct the Record on the Temporary Enforcement Policy* (Apr. 2, 2020) <https://www.epa.gov/newsreleases/epa-sends-letter-all-members-congress-correct-record-temporary-enforcement-policy>; Letter from Susan Parker Bodine, Assistant Administrator, EPA Office of Enforcement and Compliance Assurance, to Sen. Diane Feinstein (Apr. 2, 2020) https://www.epa.gov/sites/production/files/2020-04/documents/2020-04-02_epa-feinstein_epa_temporary_enforcement_compliance_guidance.pdf; Letter from Susan Parker Bodine, Assistant Administrator, EPA Office of Enforcement and Compliance Assurance, to Sen. Katie Porter (Apr. 2, 2020) https://www.epa.gov/sites/production/files/2020-04/documents/2020-04-02_epa-porter_epa_temporary_enforcement_compliance_guidance.pdf; Letter from Susan Parker Bodine, Assistant Administrator, EPA Office of Enforcement and Compliance Assurance, to Sen. Mike Quigley (Apr. 2, 2020) https://www.epa.gov/sites/production/files/2020-04/documents/2020-04-02_epa-quigley_epa_temporary_enforcement_compliance_guidance.pdf.

¹³ Kelsey Brugger, *EPA Won't Reveal Waivers*, E&E News (Apr. 3, 2020) <https://www.eenews.net/greenwire/2020/04/03/stories/1062777853>.

people can respond appropriately with personal protective measures, and individuals, local governments, and states can act to hold polluters accountable and protect public health. Since EDF is engaged actively in informing the public, it is imperative that this FOIA request be approved for expedited processing to vindicate this significant and timely need.

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: exemptions granted to regulated entities and EPA's monitoring and enforcement of its regulations. 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. These outreach channels are proven effective, having resulted in multiple articles in major media outlets.¹⁴ We fully intend to disseminate information received in response to this request. Accordingly, we respectfully request that the documents be furnished without charge. 5 U.S.C. § 552(a)(4)(A)(iii).

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 (303) 447-7212 or by email at rwinn@edf.org.

Respectfully submitted,

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Boulder, CO 80302

¹⁴ See, e.g., Scott Waldman, Emails: Trump aide had blueprint to unravel climate science, E&E News (Dec. 10, 2019) (reporting information disclosed through an EDF FOIA request), <https://www.eenews.net/climatewire/stories/1061769389/>; Ellen Knickmeyer & Seth Borenstein, *Emails: Trump Official Pressed NASA on Climate Science*, Assoc. Press (June 14, 2019), <https://apnews.com/4ec9affd55a345d582a4cc810686137e>; Ryan Beene, *White House Told EPA to Ready California Autos Challenge in 2017*, Bloomberg (June 1, 2018) (reporting information disclosed through an EDF FOIA request), <https://www.bloomberg.com/news/articles/2018-06-01/white-house-told-epa-to-readycalifornia-autos-challenge-in-2017>; Ellen Knickmeyer, *Emails Show Cooperation Among EPA, Climate-Change Deniers*, Assoc. Press (May 26, 2018) (same), <https://apnews.com/64cd37b0503440c0b92e6ca075f87dd4>.