

November 17, 2017

SUBMITTED VIA EMAIL TO OSFOIA@IOS.DOI.GOV.

Ms. Clarice Julka
MS-7328, MIB
1849 C Street, NW
Washington, DC 20240
(202) 513-0765

Re: Freedom of Information Act Request for Records Related to Correspondence with Oil and Gas Trade Associations and Industry Representatives

Dear Ms. Julka:

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. Department of the Interior (“DOI”).

Specifically, EDF requests correspondence between the DOI Office of the Secretary (“OS”)—including OS’s employees and contractors and anyone else who is a custodian of OS records—and any outside party, including any employees, contractors, attorneys, lobbyists, or other representatives of any oil and gas trade organization or company in the oil and gas industry.

EDF seeks correspondences relating to any of the following topics:

- a. “Waste Prevention, Production Subject to Royalties, and Resource Conservation,” 81 Fed. Reg. 83,008 (Nov. 18, 2016) (the “Waste Prevention Rule”),
- b. “Waste Prevention, Production Subject to Royalties, and Resource Conservation; Postponement of Certain Compliance Dates,” 82 Fed. Reg. 27,430 (June 15, 2017),
- c. “Waste Prevention, Production Subject to Royalties, and Resource Conservation; Delay and Suspension of Certain Requirements,” 82 Fed. Reg. 46,458 (proposed Oct. 5, 2017),
- d. Exec. Order No. 13,783, “Presidential Executive Order on Promoting Energy Independence and Economic Growth,” 82 Fed. Reg. 16,093 § 7(b) (Mar. 31, 2017) (directing the Secretary to “review . . . and, if appropriate . . . publish for notice and comment proposed rules suspending, revising, or rescinding,” *inter alia*, the Waste Prevention Rule),
- e. to the extent not covered above, the suspension, postponement, elimination, or modification of the Waste Prevention Rule or any requirement or provision thereof,

- f. *Wyoming v. U.S. Dep't of the Interior*, No. 16-cv-00285 (D. Wyo. filed Nov. 18, 2016) (challenge to the Waste Prevention Rule), including preliminary injunction requests,
- g. *California v. U.S. Bureau of Land Mgmt.*, No. 17-cv-03804, 2017 U.S. Dist. LEXIS 176620 (N.D. Cal. 2017) (challenge to, and vacatur of, the “Postponement of Certain Compliance Dates” for the Waste Prevention Rule).

We emphasize that this request is for correspondence relating to the foregoing topics, whether or not such correspondence utilizes the formal names or citations provided above, and regardless of whether parties to the correspondence are utilizing business, personal, or other addresses or accounts. This request expressly includes correspondence relating to meetings, phone calls, or other communications or encounters relating to the foregoing topics.

This request covers correspondence created or transmitted from January 20, 2017 until the date upon which OS concludes its search for responsive records.

For the purposes of this request:

- “correspondence” includes, but is not limited to, hard-copy correspondence and electronic correspondence such as emails, text messages, and correspondence transmitted through any other electronic platform, including any attachments, as well as logs of telephone calls;
- correspondence is “between” two individuals whenever both individuals are included anywhere among sender(s) and/or recipient(s).

If any of the information sought in this request is deemed by the Agency 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 43 C.F.R. § 2.20(a)(2), which applies when there is “[a]n urgency to inform the public about an actual or alleged Federal Government activity and the request is made by a person primarily engaged in disseminating information.” In support of this request, I certify that this “explanation is true and correct to the best of [my] knowledge and belief.” 43 C.F.R. § 2.20(b)(2).

1. The Bureau of Land Management (“BLM”) promulgated the Waste Prevention Rule “to reduce the waste of natural gas from mineral leases” it administers. 81 Fed. Reg. at 83,009. This wasted gas costs taxpayers up to \$23 million per year in lost royalty revenue. *See* BLM, “Fact Sheet on Methane and Waste Prevention Rule” (Nov. 2016), https://www.doi.gov/sites/doi.gov/files/uploads/methane_waste_prevention_rule_factsheet.pdf. The Waste Prevention Rule will also avoid annual emissions of up to 180,000 tons of methane—an extremely potent greenhouse gas. *See id.* BLM estimated that the Waste Prevention Rule’s benefits would exceed its costs by up to \$204 million per year. *See id.*

2. The reduction of waste from oil and gas operations is a topic of intense public interest. BLM received more than 333,000 public comments on the proposed Waste Prevention Rule, and related news events are frequently covered in major media outlets. *See, e.g.,* Amy Harder, *Finding a Method to the Methane Madness*, Axios (Oct. 30, 2017), <https://www.axios.com/trump-obama-methane-regulations-2502481514.html>; Eric Lipton, *Courts Thwart Administration's Effort to Rescind Obama-Era Environmental Regulations*, N.Y. Times (Oct. 6, 2017), <https://www.nytimes.com/2017/10/06/climate/trump-administration-environmental-regulations.html>; *Judge Reinstates Obama-Era Methane Regulation*, FOXNews.com (Oct. 4, 2017), <http://www.foxnews.com/politics/2017/10/04/judge-reinstates-obama-era-methane-regulation.html>; Alan Kovski & Rachel Leven, *Methane Rule Under Fire at Interior after Surviving Senate*, Bloomberg BNA (May 10, 2017), <https://www.bna.com/methane-rule-fire-n73014450755/>.
3. Recently, questions about operations at DOI have also elicited intense public interest and received widespread media coverage, with a particular focus on whether certain individuals or organizations have received special favors or access to high-level officials. *See, e.g.,* Rebecca Worby, *Scandals Pile Up for Interior Secretary*, High Country News (Oct. 31, 2017), <http://www.hcn.org/articles/scandals-pile-up-for-interior-secretary-zinke>; *Trump Official Denies Involvement with \$300 Million Puerto Rico Energy Contract*, TIME.com (Oct. 27, 2017), <http://time.com/5001054/ryan-zinke-whitefish-energy-contract/>; Ben LeFebvre & Esther Whieldon, *Trump's Interior Chief 'Hopping Around from Campaign Event to Campaign Event'*, Politico (updated Oct. 11, 2017), <https://www.politico.com/story/2017/10/05/zinke-fundraiser-official-travel-interior-243470>.

Many of the questions about operations at DOI directly concern the topics and organizations at issue in this FOIA request. *See, e.g.,* Mark Hand, *Secretary Zinke Met with Industry Officials Shortly Before Delaying Methane Rule*, ThinkProgress (July 6, 2017), <https://thinkprogress.org/ryan-zinke-met-with-industry-officials-30c4f3fc43a/> (describing a meeting between the Secretary and oil and gas industry officials); Juliet Eilperin, *Interior Secretary's Personal Schedule Shows Industry Chiefs Have Frequent Access*, Wash. Post (May 19, 2017), <https://www.washingtonpost.com/news/energy-environment/wp/2017/05/19/personal-schedule-shows-industry-ceos-frequent-access-to-interior-secretary/> (describing Secretary Zinke's interactions with representatives of the oil and gas industry); Cooper McKim, *Watchdog Group Suspects Coordination Between Energy Lobbyists and DOI, Files Lawsuit*, Wyoming Public Media (Oct. 24, 2017), <http://wyomingpublicmedia.org/post/watchdog-group-suspects-coordination-between-energy-lobbyists-and-doi-files-lawsuit> (describing efforts to uncover communications between DOI and oil and gas trade associations pertaining to sage grouse protections).

4. Some external organizations, including oil and gas trade associations and industry representatives, have forcefully opposed limits on methane pollution from oil and gas production. *See, e.g.,* "Brief in Support of Western Energy Alliance and Independent Petroleum Association of America's Petition for Review of [the Waste Prevention

Rule],” *Wyoming v. U.S. Dep’t of the Interior*, No. 16-cv-00285 (D. Wyo. Oct. 2, 2017); “*Amicus Curiae* Brief of [American Petroleum Institute et al.]” supporting the “Postponement of Certain Compliance Dates” for the Waste Prevention Rule, *California v. U.S. Bureau of Land Mgmt.*, No. 17-cv-03804, 2017 U.S. Dist. LEXIS 176620 (N.D. Cal. Sept. 6, 2017); Comments of the Independent Petroleum Association of America, Western Energy Alliance et al. on the proposed Waste Prevention Rule, Docket ID No. BLM-2016-0001-8313 (Apr. 22, 2016) (urging that the Waste Prevention Rule “should not be promulgated”); Comments of the American Petroleum Institute on the proposed Waste Prevention Rule, Docket ID No. BLM-2016-0001-9073, (Apr. 22, 2016) (recommending that DOI withdraw major portions of the Waste Prevention Rule).

5. The timing of DOI’s next attempt to undermine waste prevention standards for the oil and gas sector is deeply uncertain, but action may be imminent. The comment period for the proposed “Delay and Suspension of Certain Requirements” of the Waste Prevention Rule closed just last week, 82 Fed. Reg. at 46,458, and final action could follow within weeks. Any such action could directly undercut the public interests that the Waste Prevention Rule advances—namely, reducing the waste of valuable public resources and limiting associated harmful pollution. Through the public comment process on the proposed Waste Prevention Rule and continued media coverage, the public has clearly demonstrated its investment in this issue. Americans who are not represented by oil and gas trade associations deserve to know whether they have had an equitable opportunity to engage in this discussion—and they deserve to know it before DOI takes further action, while there is still time to demand and implement any remedial measures that prove appropriate.
6. EDF engages in extensive, daily efforts to inform the public about matters affecting public health and 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 and supporters, press releases, blog posts, active engagement on social media, and frequent appearances by staff in major media outlets. In particular, EDF has a deep and longstanding commitment to informing the public about efforts to limit methane pollution from oil and gas production. *See, e.g., Defending Standards to Cut Methane Waste*, EDF, <https://www.edf.org/energy/defending-standards-cut-methane-waste> (last visited Nov. 4, 2017); Dan Grossman, *A Timeline of Zinke’s Crusade Against Methane Rules*, EDF Voices (Oct. 16, 2017), <https://www.edf.org/blog/2017/10/16/timeline-zinkes-crusade-against-methane-rules>; Press Release, EDF, *U.S. District Court Strikes Down Interior Secretary’s Suspension of Common Sense Protections to Reduce Waste of Natural Gas* (Oct. 4, 2017), <https://www.edf.org/media/us-district-court-strikes-down-interior-secretarys-suspension-common-sense-protections-reduce>; Rene Marsh, *EPA Ordered to Enforce Obama-Era Methane Pollution Rule*, CNN (Aug. 1, 2017), <http://www.cnn.com/2017/07/31/politics/dc-circuit-epa-methane-rule/index.html> (quoting EDF attorney Peter Zalzal); Juliet Eilperin, *Trump Administration Delays Rules Limiting Methane Emissions*, Wash. Post (June 14, 2017), https://www.washingtonpost.com/politics/trump-administration-delays-rules-limiting-methane-emissions/2017/06/14/0e7d50fa-512b-11e7-be25-3a519335381c_story.html

(quoting EDF attorney Peter Zalzal); Ramón Alvarez, *Another Study Confirms Methane Problem Warrants Action*, EDF Energy Exchange (Feb. 7, 2017), <http://blogs.edf.org/energyexchange/2017/02/07/another-study-confirms-methane-problem-warrants-action/>; Peter Zalzal, *Defending BLM Standards that Reduce Waste, Protect Air Quality*, EDF Climate 411 (Dec. 6, 2016), <http://blogs.edf.org/climate411/2016/12/06/defending-blm-standards-that-reduce-waste-protect-air-quality/>.

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.

The requested “records concern the operations or activities of the Federal government” because they pertain to how DOI and BLM have addressed an issue of public interest and import: limits on methane pollution from oil and gas leases that BLM administers. *See* 43 C.F.R. § 2.48(a)(1). Disclosure will “contribute to public understanding of those operations or activities” because the records directly represent DOI’s operations and activities. 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. *See id.* § 2.48(a)(2). Disclosure will “significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject” because the information contained in the records is not currently publicly available. I am not aware of publicly disclosed records that provide a thorough account of OS’s correspondence on the topics—and with the external organizations—at issue in this FOIA request. EDF will take all reasonable efforts to distribute responsive records to the broad audience of Americans interested in the relevant issues. As such, disclosure will “increase the level of public understanding . . . that existed prior to disclosure.” *Id.* § 2.48(a)(3).

“[T]he public’s understanding of the subject in question will be enhanced to a significant extent by the disclosure” for many of the reasons provided above: the information in the records is not currently available to the public; the records will increase public understanding of the subject; and EDF has the intention and capability to distribute newsworthy information from the records to the public. EDF also has deep expertise in environmental issues and administrative processes—and the Waste Prevention Rule in particular. EDF has defended the Waste Prevention Rule in litigation and administrative comments. *See, e.g.*, EDF et al., “Complaint for Declaratory and Injunctive Relief,” *California v. U.S. Bureau of Land Mgmt.*, No. 17-cv-03804, 2017 U.S. Dist. LEXIS 176620 (N.D. Cal. July 10, 2017); EDF et al., “Citizen Groups’ Response to Motions for a Preliminary Injunction,” *Wyoming v. U.S. Dep’t of the Interior*, No. 16-cv-00285 (D. Wyo. Dec. 15, 2016); Comments of EDF on the proposed Waste Prevention Rule, Docket ID No. BLM-2016-0001-8857 (Apr. 22, 2016). As described above, we have frequently presented information about the Waste Prevention Rule to the public. We are fully capable of presenting the contents of the responsive records to the public in a rigorous and accessible manner, and we fully intend to utilize those capabilities with respect to any records produced. *See id.* § 2.48(a)(4).

We are not seeking information for any commercial purpose and the records received will contribute to a greater public understanding of an issue of widespread interest to the American people: the loss of a safeguard that enhances climate security and reduces waste of a valuable, publicly owned natural resource. *See id.* § 2.48(b)(2); *see also* 5 U.S.C. § 552(a)(4)(A)(iii). Accordingly, we respectfully request that the documents be furnished without charge.

For ease of administration and to conserve resources, we will accept documents produced in a readily accessible electronic format. Please provide responsive records as soon as they are available, and do not postpone the release of available records pending the availability of other records. 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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