



**SUBMITTED ELECTRONICALLY**  
**Via FOIA Online**

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

June 23, 2020

Re: Freedom of Information Act Request

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” or “the Agency”) regulations, 40 C.F.R. §§ 2.100–2.406, Environmental Defense Fund (“EDF”) respectfully requests copies of certain EPA records, as that term is described at 5 U.S.C. § 552(f)(2) of the Freedom of Information Act (FOIA). Specifically, EDF requests copies of records generated, received or transmitted beginning on October 1, 2018 up through and including the date that you conduct your search for records. EDF requests all correspondence<sup>1</sup> that addresses the topics described below and is between any EPA personnel in:

- the Office of Chemical Safety and Pollution Prevention, including but not limited to Lynn Dekleva and Eric Baptist;
- the Office of the Administrator;
- the Office of General Counsel; or
- the Office of Enforcement and Compliance Assurance.

and any the following External Parties:

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<sup>1</sup> 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.

- Bergeson & Campbell PC;
- B&C Consortia Management, L.L.C.;
- Wiley Rein (or Wiley) LLP;
- Arnold & Porter (or Arnold & Porter Kaye Scholer) LLP;
- American Chemistry Council;
- TSCA New Chemicals Coalition;
- Chemical Users Coalition; or
- Nano Business Commercialization Association.

This request includes correspondence where an External Party is the sender or appears anywhere among the recipients, including as a “cc” or “bcc” recipient.

Topics: EDF requests all correspondence between any EPA personnel identified above and any of the External Parties identified above, regarding the following topics:

- concerns about, or the need for revisions of, the agency’s language typically used in Orders issued under section 5(e) or section 5(f) of the Toxic Substances Control Act (TSCA), including but not limited to the “boilerplate” language on EPA’s website<sup>2</sup> via a link titled “EPA Previous Version TSCA Section 5 Orders boilerplate (PDF) (78 pp, 279 K, September 12, 2016);
- revisions proposed or made to the agency’s language typically used in Orders issued under TSCA section 5(e) or section 5(f), including but not limited to the “boilerplate” language EPA posted to its website<sup>3</sup> on or about April 21, 2020 via a link titled “Updated version TSCA Section 5 Order for a New Chemical Substance (PDF) (77 pp, 546 K, April 21, 2020),” or any prior outlines, drafts, or versions of this document;
- solicitations by the EPA personnel of comments on the above-identified language from any of the External Parties;
- requests from any of the External Parties to the EPA personnel for an opportunity to discuss or provide comments on the above-identified language;
- comments submitted by or otherwise received by EPA from any of the External Parties pertaining to the above-identified language; or
- responses to such comments, or other communications between with any of the External Parties and the EPA personnel relating to such comments.

In any response to this request, please indicate the date the search was conducted. We request that the date of the search be as close as possible to the date of EPA’s final response to this FOIA request.

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<sup>2</sup> Available at <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tasca/new-chemicals-program-boilerplates>.

<sup>3</sup> Also available at <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tasca/new-chemicals-program-boilerplates>.

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 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: communications between EPA personnel and members of the regulated community or their representatives (trade associations, law firms) regarding agency policies directly affecting them. More specifically, the public has shown great interest in understanding how EPA officials have complied with ethics requirements and what outside interests might be influencing EPA's decision-making on important policy matters.<sup>4</sup> Especially in regards to EPA's implementation of the recently amended Toxic Substances Control Act, the public has been greatly concerned with the officials with ties to industry who have been nominated and appointed to implement the law and protect human health and the environment against dangerous chemicals.<sup>5</sup>

EDF is well-positioned to disseminate the records to the public, as we engage in extensive, daily efforts to inform the public about matters involving environmental policy through press releases, action alerts, reports, analyses, blogs, and other public outreach materials.<sup>6</sup> EDF has also published a number of blogs detailing potential conflicts of interests at EPA, including blogs that relied on materials released through FOIA.<sup>7</sup> Moreover, in addition to its own capacity to convey

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<sup>4</sup> See, e.g., FOIA Request, Nancy Beck (Feb. 12, 2018), <https://www.citizensforethics.org/foia/foia-request-environmental-protection-agency-nancy-beck/>.

<sup>5</sup> See, e.g., Eric Lipton, *Why Has the E.P.A. Shifted on Toxic Chemicals? An Industry Insider Helps Call the Shots*, NY TIMES (Oct. 21, 2017), <https://www.nytimes.com/2017/10/21/us/trump-epa-chemicals-regulations.html>; Elizabeth Shogren, *EPA scientists found a toxic chemical damages fetal hearts. The Trump White House rewrote their assessment*, REVEAL NEWS (Feb. 28, 2020), <https://www.revealnews.org/article/epa-scientists-found-a-toxic-chemical-damages-fetal-hearts-the-trump-white-house-rewrote-their-assessment/>; Ellen Knickmeyer, *White House moves to weaken EPA rule on toxic compounds*, ASSOCIATED PRESS (Apr. 18, 2020), <https://apnews.com/83eb8baf3c1533d9535f28e7145813c9>.

<sup>6</sup> See, e.g., Richard Denison, *Trump EPA caves again to industry demands on new chemicals, and workers pay the price*, EDF HEALTH BLOG (Aug. 8, 2019), <http://blogs.edf.org/health/2019/08/08/trump-epa-caves-again-to-industry-demands-on-new-chemicals-and-workers-pay-the-price/>; Sam Lovell, *New Report: Toxic Consequences – Trump's Attacks on Chemical Safety Put Our Health at Risk* (June 17, 2019), <http://blogs.edf.org/health/2019/06/17/new-report-toxic-consequences-trumps-attacks-on-chemical-safety-put-our-health-at-risk/>; Richard Denison, *EPA's own words reveal what its new chemicals program has become – a captive of industry*, EDF HEALTH BLOG (May 29, 2020), <http://blogs.edf.org/health/2020/05/29/epas-own-words-reveal-what-its-new-chemicals-program-has-become-a-captive-of-industry/>.

<sup>7</sup> See, e.g., Richard Denison, *Dourson emails show he was paid by and worked closely with ACC when providing states "advice" on chemicals made by ACC members*, EDF BLOG (Dec. 21, 2017),

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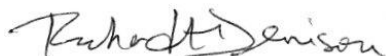
information to the public, EDF shares important data with journalists to help enhance public knowledge.<sup>8</sup> We fully intend to disseminate newsworthy information received in response to this request. In particular, the documents requested would shed light on potential conflicts of interest in its chemical program. The release of these documents would also significantly enhance the public's understanding of how outside interests are influencing EPA's decisions under the Toxic Substances Control Act.

Accordingly, we respectfully request that the documents be furnished without charge. 5 U.S.C. § 552(a)(4)(A)(iii).

### Conclusion

For ease of administration and to conserve resources, we will accept documents produced in a readily accessible electronic format. **Please provide records on a rolling basis**; EPA's search for, or deliberations concerning, certain records should not delay the production of others that EPA has already retrieved and elected to produce. 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 202-572-3348 or by email at [rdenison@edf.org](mailto:rdenison@edf.org).

Respectfully submitted,



Richard A. Denison, Ph.D.  
Lead Senior Scientist, Health  
Environmental Defense Fund  
1875 Connecticut Ave. NW, Suite 600  
Washington, D.C. 20009  
T: 202-572-3348  
[rdenison@edf.org](mailto:rdenison@edf.org)

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<http://blogs.edf.org/health/2017/12/21/dourson-emails-show-he-was-paid-by-and-worked-closely-with-acc-when-providing-states-advice-on-chemicals-made-by-acc-members/>.

<sup>8</sup> Ellen Knickmeyer & Seth Borenstein, *A Trump Official Consulted With Climate-Change Deniers, Emails Show*, TIME (June 14, 2019), <https://time.com/5607109/william-happer-trump-official-emails-climate-change-rejecters/>; Nicole Goodkind, *Trump Administration Official Repeatedly Consulted With Climate Change Deniers On Climate Policy*, NEWSWEEK (June 14, 2019), <https://www.newsweek.com/donald-trump-climate-change-nasa-1444145>.