



State of West Virginia  
Office of the Attorney General

Patrick Morrissey  
Attorney General

(304) 558-2021  
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January 23, 2015

**Via Certified Mail & Email**

Mr. Larry F. Gottesman  
National FOIA Officer  
Environmental Protection Agency HQ  
1200 Pennsylvania Avenue, NW  
Mail Code: 2822T  
Washington, D.C. 20460  
Gottesman.larry@Epa.gov

Mr. William Niebling  
Senior Advisor for Congressional  
and International Affairs  
Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Mail Code: 6101A  
Washington, D.C. 20460  
Niebling.william@Epa.gov

**Re: Request Number EPA-HQ-2015-002217**

Dear Messrs. Gottesman and Niebling:

We write in response to two letters regarding the above Freedom of Information Act ("FOIA") request: (1) the letter of Mr. Gottesman, dated December 24, 2014, which addresses the denial of our fee waiver request ("Gottesman Letter"); and (2) the letter of Mr. Niebling, dated January 7, 2015, which seeks a clarified description of our request ("Niebling Letter"). These letters were in response to the resubmission of our original FOIA request, which we

modified following your first denial of our fee waiver request and request for clarification. Our fee waiver request was submitted in connection with our resubmitted FOIA request, dated December 5, 2014, seeking copies of records regarding EPA's 2011 Settlement Agreement, Docket Number EPA-HQ-OGC-2010-1057. *See* Exhibit A.

In the present letter, we resubmit *both* the fee waiver request *and* the December 5 request for information under the FIOA, while making the modifications described below. *See* Exhibit A. This resubmission follows several telephone conversations between our offices, in which we sought to resolve concerns regarding our requests without need for litigation or appeal.

This letter elaborates why EPA is required by law to grant a fee waiver, and modifies our FOIA request consistent with the above-referenced telephone conversations, including conversations with Mr. Kevin Auerbacher. We ask that you both grant the resubmitted waiver request and disclose all responsive documents to the resubmitted FOIA request, no later than 20 business days from the receipt of this letter, as required by FOIA. As before, we seek all responsive documents, but agree to a rolling production in order to facilitate our request.

#### The Gottesman Letter

The fee waiver request that we submitted on December 5, 2014, easily meets the standard for a FOIA fee waiver. "FOIA's fee waiver provision states that documents requested from a government agency 'shall be furnished without any charge . . . if 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.'" *Perkins v. U.S. Dep't of Veterans Affairs*, 754 F. Supp. 2d 1, 5 (D.D.C. 2010) (quoting 5 U.S.C. § 552(a)(4)(A)(iii)). Where the requesters are public officials with no "commercial interest[s]," as here, a fee request must be given a liberal construction. *See id.*; *McClellan Ecological Seepage Situation v. Carlucci*, 835 F. 2d 1282, 1284 (9th Cir. 1987) (the public interest fee waiver provision "is to be liberally construed in favor of waivers for noncommercial requesters"). The *only* question here is whether release of the information requested will be "likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii); *accord* 40 C.F.R. § 2.107(l). The request satisfies all four factors on that question in EPA's FOIA rules:

#### **Factor 1: The subject of the request.**

The first factor is "whether the subject of the requested records concerns '*the operations or activities of the government.*'" 40 C.F.R. § 2.107(l)(2)(i) (emphasis added). The subject of the requested records is the 2011 Settlement Agreement, EPA-HQ-OGC-2010-1057, as more fully described in our request. *See* Exhibit A. EPA is a party to the 2011 Settlement Agreement, which imposes specific and identifiable obligations on EPA. *See id.* Therefore, the 2011 Settlement Agreement unmistakably "concern[s] identifiable operations or activities of the Federal government, with a connection that is direct and clear." 40 C.F.R. § 2.107(l)(2)(i).

**Factor 2: The informative value of the information to be disclosed.**

The second factor asks “[w]hether the disclosure is ‘likely to contribute’ to an understanding of government operations or activities.” *Id.* § 2.107(l)(2)(ii) (emphasis added). The disclosure of records sought in our request, which directly relate to the 2011 Settlement Agreement, are “likely to contribute” to an understanding of government operations or activities because the public is directly affected by EPA’s specific obligations under the 2011 Settlement Agreement. *Id.* § 2.107(l)(2)(ii); *see* EPA-HQ-OGC-2010-1057; Exh. A. The 2011 Settlement Agreement committed EPA to propose standards of performance under Section 111 of the Clean Air Act, 42 U.S.C. § 7411, for new, modified, and existing power plants that include emission standards for carbon dioxide. *See* Docket Nos. EPA-HQ-OGC-2010-1057-0002; EPA-HQ-OGC-2010-1057-0036. To this point, EPA has adhered to this agreement, proposing standards of performance for new coal-fired power plants (79 Fed. Reg. 1430 (Jan. 8, 2014)), modified coal-fired power plants (79 Fed. Reg. 34,960 (June 18, 2014)), and existing coal-fired power plants (79 Fed. Reg. 34,830 (June 18, 2014)). The requested records will be “meaningfully informative” about EPA’s “operations or activities” because they will “increase[] [the] public understanding” regarding how and why EPA arrived at the 2011 Settlement Agreement and how EPA views its obligations thereunder. 40 C.F.R. § 2.107(l)(2)(ii).

**Factor 3: The contribution to an understanding of the subject by the public.**

The third factor is “[w]hether disclosure of the requested information will contribute to ‘public understanding.’” 40 C.F.R. § 2.107(l)(2)(iii) (emphasis added). To satisfy this element, the requester must demonstrate his ability to disseminate the disclosed information to the public. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003).

Here, the disclosure will undoubtedly contribute to a “public understanding” of a “reasonably broad audience of persons interested in the subject” because all documents received pursuant to our request will be disseminated to the public through various, specific ways available to the West Virginia Attorney General. As the chief legal officer of the State of West Virginia who is directly elected by the People, the West Virginia Attorney General has the “ability and intention to effectively convey information to the public.” *Id.* § 2.107(l)(2)(iii). *See* W. Va. Const. art. VII, § 1. The Attorney General will make all documents disclosed by EPA available to the general public, both in hard copy form at the main office of the Attorney General of West Virginia, and on the West Virginia Attorney General’s website, free of charge. *See generally* <http://www.ago.wv.gov/publicresources/epa/Pages/default.aspx>. The Attorney General will also review the documents, describe them in an executive summary that highlights the most significant of the documents, and post that summary on the Attorney General’s website. Depending on the content of the documents, the Attorney General may also publicize the disclosures through press releases to the entire media spectrum, media interviews with both newspaper and local television stations, and personal “town hall”-style discussions held throughout the State. In addition, again, depending upon the content of the documents, the

Attorney General may share the disclosed information with the Governor and the elected leaders of the state legislature for further dissemination through the public's elected representatives. These specific and identifiable means by which the Attorney General will publicize the disclosures are far more than "FOIA requires." *Rossotti*, 326 F.3d at 1314.

**Factor 4: The significance of the contribution to public understanding.**

The fourth factor is whether "the disclosure is likely to contribute '*significantly*' to public understanding of government operations or activities." 40 C.F.R. § 2.107(l)(2)(iv) (emphasis added). The contribution of the information requested, which relates to the implementation of the 2011 Settlement Agreement as more fully described in our request, is likely to "significantly" benefit the public understanding of EPA's "operations or activities." *Id.* To begin, because the 2011 Settlement Agreement is at least a significant factor that led to EPA's current proposed regulations of power plants under Section 111 of the Clean Air Act, public disclosure of information regarding this subject is critical to the public awareness of how and why EPA decided to regulate power plants in this way. The requested information is the only source for the public regarding the agency's decision to make a legally binding commitment to propose and finalize rules that will affect thousands of jobs in the coal mining and power generation sectors, and will directly influence the generation of electricity and the regulation of public utilities.

The Niebling Letter

We continue to believe that December 5 FOIA request reasonably describes the documents we are seeking, and would permit EPA officials to identify and locate those documents. Under FOIA, agencies like EPA are required to make "promptly available" records that are "reasonably describe[d]" in a request. 5 U.S.C. § 552(a)(3)(A); *see also* 40 C.F.R. § 2.102(c). The "reasonably describes" standard "makes explicit the liberal standard for identification that Congress intended." *Nat'l Sec. Counselors v. C.I.A.*, 898 F. Supp. 2d 233, 274 (D.D.C. 2012) (quoting S. Rep. No. 93-854, at 10 (1974)). *See also Kowalczyk v. Dep't of Justice*, 73 F.3d 386, 388 (D.C. Cir. 1996) ("A request reasonably describes records if 'the agency is able to determine precisely what records are being requested.'" (quoting *Yeager v. Drug Enforcement Admin.*, 678 F.2d 315, 326 (D.C. Cir. 1982))). Our December 5 request satisfies this "liberal standard" because our request includes specific information regarding the "date," "author[s]," "recipient[s]," and "subject matter" of the documents sought. *Id.*

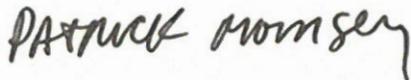
However, in light of subsequent telephone conversations with Mr. Kevin Auerbacher, we believe that an alternatively phrased FOIA request would satisfy the public's right to the documents we seek, while also accommodating the practical concerns Mr. Niebling expressed in his January 7, 2015 letter. Accordingly, we withdraw our prior request. Instead, we now request that you provide a copy of any documents (including any and all written or electronic correspondence, electronic records, facsimiles, information about meetings and/or discussions, and transcripts and notes of any such meetings and/or discussions) from January 1, 2010, to the

date of this letter between any persons representing one or more party to the 2011 Settlement Agreement—the States of New York, California, Connecticut, Delaware, Maine, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Massachusetts, the District of Columbia, and the City of New York, and Natural Resources Defense Council, Sierra Club, and Environmental Defense Fund—and any of the following employees or former employees of EPA: Lisa Jackson, Gina McCarthy, Janet McCabe, Joseph Goffman, Elliott Zenick, Patricia Embrey, Scott Jordan, Avi Garbow, Lorie Schmidt, Howard Hoffman. We explicitly limit our request to documents relating to the 2011 Settlement Agreement, the Section 111(b) rulemaking(s), and the Section 111(d) rulemaking.

\* \* \*

We thus resubmit our requested fee waiver and the description of the requested records, as modified above. *See* 5 U.S.C. § 552(a)(4)(A); *see also* 40 C.F.R. § 2.107(l), and (c). Because multiple parties are listed as co-requestors, Patrick Morrissey, the Attorney General of the State of West Virginia, confirms that he is the authorized representative for communications regarding this FOIA request. Thank you in advance for your prompt cooperation in this important matter.

Sincerely,



Patrick Morrissey  
West Virginia Attorney General



Doug Peterson  
Nebraska Attorney General



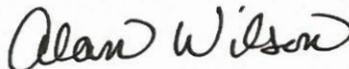
Derek Schmidt  
Kansas Attorney General



E. Scott Pruitt  
Oklahoma Attorney General



Jack Conway  
Kentucky Attorney General



Alan Wilson  
South Carolina Attorney General

A handwritten signature in blue ink, appearing to read "James D. Caldwell".

James D. "Buddy" Caldwell  
Louisiana Attorney General

A handwritten signature in blue ink, appearing to read "Peter K. Michael".

Peter K. Michael  
Wyoming Attorney General

cc:

The Honorable Gina McCarthy  
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Office of the Attorney General

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Attorney General

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December 5, 2014

**Via Certified Mail & Email**

Mr. Larry F. Gottesman  
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Environmental Protection Agency HQ  
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Niebling.william@Epa.gov

**Re: Request Number EPA-HQ-2015-000890**

Dear Messrs. Gottesman and Niebling:

We write in response to two letters regarding the above Freedom of Information Act ("FOIA") request: (1) the letter of Mr. Gottesman, dated November 5, 2014, which addresses the denial of our fee waiver request ("Gottesman Letter"); and (2) the letter of Mr. Niebling, dated December 3, 2014, which seeks a clarified description of our request ("Niebling Letter"). Our fee waiver request was submitted in connection with our FOIA request, dated October 17, 2014,

seeking copies of records regarding EPA's 2011 Settlement Agreement, Docket Number EPA-HQ-OGC-2010-1057. *See* Exhibit A.

In the present letter, we resubmit *both* the fee waiver request *and* the October 17 request for information under the FIOA (with three minor modifications noted below). *See* Exhibit A. This letter further elaborates why EPA is required by law to grant a fee waiver, and also explains why our request is sufficiently clear. Accordingly, we ask that you both grant the resubmitted waiver request and disclose all responsive documents to the resubmitted FOIA request, no later than 20 business days from the receipt of this letter, as required by FOIA. We seek all responsive documents, but would agree to a rolling production in order to facilitate our request.

### The Gottesman Letter

The fee waiver request that we submitted on October 17, 2014, easily meets the standard for a FOIA fee waiver. "FOIA's fee waiver provision states that documents requested from a government agency 'shall be furnished without any charge . . . if 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.'" *Perkins v. U.S. Dep't of Veterans Affairs*, 754 F. Supp. 2d 1, 5 (D.D.C. 2010) (quoting 5 U.S.C. § 552(a)(4)(A)(iii)). Where the requesters are public officials with no "commercial interest[s]," as here, a fee request must be given a liberal construction. *See id.*; *McClellan Ecological Seepage Situation v. Carlucci*, 835 F. 2d 1282, 1284 (9th Cir. 1987) (the public interest fee waiver provision "is to be liberally construed in favor of waivers for noncommercial requesters"). The *only* question here is whether release of the information requested will be "likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii); *accord* 40 C.F.R. § 2.107(l). The request satisfies all four factors on that question in EPA's FOIA rules:

#### **Factor 1: The subject of the request.**

The first factor is "whether the subject of the requested records concerns '*the operations or activities of the government.*'" 40 C.F.R. § 2.107(l)(2)(i) (emphasis added). The subject of the requested records is the 2011 Settlement Agreement, EPA-HQ-OGC-2010-1057, as more fully described in our request. *See* Exhibit A. EPA is a party to the 2011 Settlement Agreement, which imposes specific and identifiable obligations on EPA. *See id.* Therefore, the 2011 Settlement Agreement unmistakably "concern[s] identifiable operations or activities of the Federal government, with a connection that is direct and clear." 40 C.F.R. § 2.107(l)(2)(i).

#### **Factor 2: The informative value of the information to be disclosed.**

The second factor asks "[w]hether the disclosure is '*likely to contribute*' to an understanding of government operations or activities." *Id.* § 2.107(l)(2)(ii) (emphasis added). The disclosure of records sought in our request, which directly relate to the 2011 Settlement

Agreement, are “likely to contribute” to an understanding of government operations or activities because the public is directly affected by EPA’s specific obligations under the 2011 Settlement Agreement. *Id.* § 2.107(1)(2)(ii); *see* EPA-HQ-OGC-2010-1057; Exh. A. The 2011 Settlement Agreement committed EPA to propose standards of performance under Section 111 of the Clean Air Act, 42 U.S.C. § 7411, for new, modified, and existing power plants that include emission standards for carbon dioxide. *See* Docket Nos. EPA-HQ-OGC-2010-1057-0002; EPA-HQ-OGC-2010-1057-0036. To this point, EPA has adhered to this agreement, proposing standards of performance for new coal-fired power plants (79 Fed. Reg. 1430 (Jan. 8, 2014)), modified coal-fired power plants (79 Fed. Reg. 34,960 (June 18, 2014)), and existing coal-fired power plants (79 Fed. Reg. 34,830 (June 18, 2014)). The requested records will be “meaningfully informative” about EPA’s “operations or activities” because they will “increase[] [the] public understanding” regarding how and why EPA arrived at the 2011 Settlement Agreement and how EPA views its obligations thereunder. 40 C.F.R. § 2.107(1)(2)(ii).

**Factor 3: The contribution to an understanding of the subject by the public.**

The third factor is “[w]hether disclosure of the requested information will contribute to ‘public understanding.’” 40 C.F.R. § 2.107(1)(2)(iii) (emphasis added). Here, the disclosure will undoubtedly contribute to a “public understanding” of a “reasonably broad audience of persons interested in the subject” because all documents received pursuant to our request will be made public. *Id.* West Virginia will make all documents disclosed by EPA available to the general public, both in hard copy form at the main office of the Attorney General of West Virginia, and on the West Virginia Attorney General’s website, free of charge. *See generally* <http://www.ago.wv.gov/publicresources/epa/Pages/default.aspx>. As the chief legal officer of the State of West Virginia who is directly elected by the People, the West Virginia Attorney General has the “ability and intention to effectively convey information to the public.” *Id.* § 2.107(1)(2)(iii). *See* W. Va. Const. art. VII, § 1.

**Factor 4: The significance of the contribution to public understanding.**

The fourth factor is whether “the disclosure is likely to contribute ‘significantly’ to public understanding of government operations or activities.” 40 C.F.R. § 2.107(1)(2)(iv) (emphasis added). The contribution of the information requested, which relates to the implementation of the 2011 Settlement Agreement as more fully described in our request, is likely to “significantly” benefit the public understanding of EPA’s “operations or activities.” *Id.* To begin, because the 2011 Settlement Agreement is at least a significant factor that led to EPA’s current proposed regulations of power plants under Section 111 of the Clean Air Act, public disclosure of information regarding this subject is critical to the public awareness of how and why EPA decided to regulate power plants in this way. The requested information is the only source for the public regarding the agency’s decision to make a legally binding commitment to propose and finalize rules that will affect thousands of jobs in the coal mining and power generation sectors, and will directly influence the generation of electricity and the regulation of public utilities.

The Niebling Letter

Our October 17 FOIA request reasonably describes the documents we are seeking, which will permit EPA officials to identify and locate those documents. Under the FOIA, agencies like EPA are required to make “promptly available” records that are “reasonably describe[d]” in a request. 5 U.S.C. § 552(a)(3)(A); *see also* 40 C.F.R. § 2.102(c). The “reasonably describes” standard “‘makes explicit the liberal standard for identification that Congress intended.’” *Nat’l Sec. Counselors v. C.I.A.*, 898 F. Supp. 2d 233, 274 (D.D.C. 2012) (quoting S. Rep. No. 93–854, at 10 (1974)). *See also* *Kowalczyk v. Dep’t of Justice*, 73 F.3d 386, 388 (D.C. Cir. 1996) (“A request reasonably describes records if ‘the agency is able to determine precisely what records are being requested.’” (quoting *Yeager v. Drug Enforcement Admin.*, 678 F.2d 315, 326 (D.C. Cir. 1982))). FOIA requests made to EPA should, “[w]henver possible, . . . include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter.” 40 C.F.R. § 2.102(c) (emphasis added).

Our October 17 request easily satisfies this “liberal standard” because, at a minimum, our request includes specific information regarding the “date,” “author[s],” “recipient[s],” and “subject matter” of the documents sought. *Id.* As our request explains, we are merely seeking communications between EPA officials and *specific* organizations and *specific* States regarding a *specific* settlement agreement, as well as other documents regarding that specific settlement. *See* Exhibit A at 2. The request identifies each of these organizations and States by name. *Id.* Moreover, the requested documents are further narrowed by a list of terms that will help ensure those documents relate to the specific settlement agreement referenced therein. *Id.* at 2-3. And the description of the forms of the documents being sought is merely a standard description of the forms that agency documents regarding this issue may take.

The Niebling Letter vaguely asserts that these specific identifying facts are insufficient to permit EPA officials to identify these records. The letter fails to explain, however, “what additional information [the requesters] need to provide” to satisfy the requirement, given that all of the parties to the settlement are specifically identified. 40 C.F.R. § 2.102(c). For example, it is entirely beyond the reasonable knowledge of any requester what personnel EPA assigned to communicate with parties to the settlement.

The Niebling Letter also appears to suggest that the “potentially . . . voluminous documents” subject to the request may be grounds for denying the request under 5 U.S.C. § 552(a)(3)(A). However, the number of records requested is irrelevant for purposes of the “reasonably describes” standard. *Tereshchuk v. Bureau of Prisons*, -- F. Supp. 3d --, 2014 WL 4637028, at \*7 (D.D.C. Sept. 16, 2014) (citing *Yeager*, 678 F.2d at 326; FOIA Update Vol. IV, No. 3, at 5 (“The sheer size or burdensomeness of a FOIA request, in and of itself, does not entitle an agency to deny that request on the ground that it does not ‘reasonably describe’ records within the meaning of 5 U.S.C. § 552(a)(3)(A)”)).

Finally, the Niebling Letter takes issue with the use of the phrases “otherwise associated with” and “in any way” in our October 17 request, as well as the search term “literal.” While we continue believe that those phrases and terms would assist the agency in identifying documents discussing the specific settlement agreement at issue, we hereby modify our request to delete those phrases and search term. As modified, the request is now:

We request that you provide a copy of any of the following documents (including any and all written or electronic correspondence, electronic records, facsimiles, information about meetings and/or discussions, and transcripts and notes of any such meetings and/or discussions) from January 1, 2010, to the date of this letter between EPA officials and any persons representing one or more party to the 2011 Settlement Agreement—the States of New York, California, Connecticut, Delaware, Maine, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Massachusetts, the District of Columbia, and the City of New York, and Natural Resources Defense Council, Sierra Club, and Environmental Defense Fund—that contain any of the following words:

- “settlement”
- “111”
- “111(b)”
- “111(d)”
- “7411”
- “7411(b)”
- “7411(d)”
- “42 U.S.C § 7411”
- “42 U.S.C § 7411(b)”
- “42 U.S.C § 7411(d)”
- “power plants”
- “EGUs”
- “coal”
- “coal-fired”
- “carbon dioxide”
- “CO<sub>2</sub>”
- “greenhouse”
- “GHG”
- “AEP v. Connecticut”
- “AEP”
- “New Jersey v. EPA”

We further request that you provide a copy of any of documents (including any and all written or electronic correspondence, electronic records, facsimiles, information about meetings

and/or discussions, and transcripts and notes of any such meetings and/or discussions) from January 1, 2010, to the date of this letter, which references the 2011 Settlement Agreement, without regard to the recipient or author of the document.

\* \* \*

We reiterate both our requested fee waiver and the description of the requested records, as modified above. *See* 5 U.S.C. § 552(a)(4)(A); *see also* 40 C.F.R. § 2.107(l), and (c). As requested in the Niebling Letter, because multiple parties are listed as co-requestors, Patrick Morrissey, the Attorney General of the State of West Virginia, confirms that he is the authorized representative for communications regarding this FOIA request. Thank you in advance for your prompt cooperation in this important matter.

Sincerely,



Patrick Morrissey  
West Virginia Attorney General



Jon Bruning  
Nebraska Attorney General



Derek Schmidt  
Kansas Attorney General



E. Scott Pruitt  
Oklahoma Attorney General



Jack Conway  
Kentucky Attorney General



Alan Wilson  
South Carolina Attorney General



James D. "Buddy" Caldwell  
Louisiana Attorney General



Peter K. Michael  
Wyoming Attorney General

cc:

The Honorable Gina McCarthy  
National Freedom of Information Office  
Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460  
[hq.foia@epa.gov](mailto:hq.foia@epa.gov)

# EXHIBIT A



State of West Virginia  
Office of the Attorney General

Patrick Morrissey  
Attorney General

October 17, 2014

(304) 558-2021  
Fax (304) 558-0140

**Via Certified Mail & Email**

The Honorable Gina McCarthy  
National Freedom of Information Office  
Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460  
hq.foia@epa.gov

**Re: Freedom of Information Act Request From The States Of West Virginia, Kansas, Louisiana, Nebraska, Oklahoma, South Carolina, and Wyoming, and the Commonwealth of Kentucky, Concerning EPA's 2011 Settlement Agreement, Docket No. EPA-HQ-OGC-2010-1057**

Dear Administrator McCarthy:

This letter is a request under the Freedom of Information Act, 5 U.S.C. § 552(a) *et seq.* (the "Act"), for information concerning communications relating to the implementation of a 2011 settlement agreement (the "2011 Settlement Agreement") between the Environmental Protection Agency ("EPA") and the States of New York, California, Connecticut, Delaware, Maine, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Massachusetts, the District of Columbia, and the City of New York, and Natural Resources Defense Council, Sierra Club, and Environmental Defense Fund. *See* Dkt. No. EPA-HQ-OGC-2010-1057. The rules that EPA has proposed pursuant to the 2011 Settlement Agreement threaten to cause severe harm to the citizens of our States, forcing coal miners to lose their jobs and leading energy prices to skyrocket.

In the 2011 Settlement Agreement, EPA committed to proposing standards of performance under Section 111 of the Clean Air Act, 42 U.S.C. § 7411, for new, modified, and existing power plants that include emission standards for carbon dioxide. *See* Dkt. Nos. EPA-HQ-OGC-2010-1057-0002; EPA-HQ-OGC-2010-1057-0036. EPA has heretofore abided by this settlement, proposing standards of performance for new coal-fired power plants (79 Fed. Reg.

1430 (Jan. 8, 2014)) modified coal-fired power plants (79 Fed. Reg. 34,960 (June 18, 2014)), and existing coal-fired power plants (79 Fed. Reg. 34,830 (June 18, 2014)). These proposed rules are rife with numerous legal defects. *See, e.g.*, Formal Comment Letter on Proposed Performance Standards for New Power Plants from the State of West Virginia et al. to Gina McCarthy, Adm'r, EPA (May 9, 2014); Letter on EPA's Section 111(d) Authority from Patrick Morrissey, Att'y Gen. of W. Va., to Gina McCarthy, Adm'r, EPA (June 6, 2014); Brief for the State of West Virginia et al. as Amicus Curiae Supporting Petitioner, *In re: Murray Energy Corporation*, No. 14-1112, 2014 WL 2885937 (D.C. Cir. June 25, 2014); Petition for Review, *State of West Virginia et al. v. EPA*, No. 14-1146 (D.C. Cir. Aug. 1, 2014).

We request that you provide a copy of any of the following documents (including any and all written or electronic correspondence, electronic records, facsimiles, information about meetings and/or discussions, and transcripts and notes of any such meetings and/or discussions) from January 1, 2010, to the date of this letter between EPA officials and any persons representing, or otherwise associated with, one or more party to the 2011 Settlement Agreement—the States of New York, California, Connecticut, Delaware, Maine, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Massachusetts, the District of Columbia, and the City of New York, and Natural Resources Defense Council, Sierra Club, and Environmental Defense Fund—that contain any of the following words:

- “settlement”
- “111”
- “111(b)”
- “111(d)”
- “7411”
- “7411(b)”
- “7411(d)”
- “42 U.S.C § 7411”
- “42 U.S.C § 7411(b)”
- “42 U.S.C § 7411(d)”
- “power plants”
- “EGUs”
- “coal”
- “coal-fired”
- “carbon dioxide”
- “CO<sub>2</sub>”
- “greenhouse”
- “GHG”
- “AEP v. Connecticut”
- “AEP”

- “New Jersey v. EPA”
- “literal”

We further request that you provide a copy of any of documents (including any and all written or electronic correspondence, electronic records, facsimiles, information about meetings and/or discussions, and transcripts and notes of any such meetings and/or discussions) from January 1, 2010, to the date of this letter, which references the 2011 Settlement Agreement in any way, without regard to the recipient or author of the document.

We also request that you waive any applicable fees. As you know, a fee waiver is appropriate when disclosure is in the public interest and not in a commercial interest. *See* 45 C.F.R. § 5.45(a) *et seq.* This request for information about an important aspect of your agency’s implementation of the 2011 Settlement Agreement unquestionably satisfies these requirements. Disclosure of the requested documents is directly in the public interest. The actions that EPA has taken pursuant to the commitments made in the 2011 Settlement Agreement will affect thousands of West Virginians, either through jobs in the coal mining or power generation sector or by way of higher electricity rates. A fee waiver is thus clearly appropriate, and we reserve our right to appeal a denial of such waiver.

In light of the importance of this inquiry to the public, we respectfully request that you disclose all responsive documents as soon as possible, but no later than 20 business days from receipt of this letter, as required under the Act. Should you assert that any of the material is exempt from disclosure, please redact the allegedly exempt sections and provide the remaining material. In each instance, please describe the redacted material in detail and specify the statutory bases for refusing to disclose the material. We reserve the right to appeal the withholding or deletion of any information.

Thank you in advance for your prompt cooperation in this important matter.

Sincerely,



Patrick Morrissey  
West Virginia Attorney General



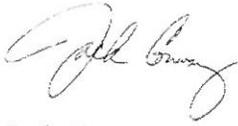
Jon Bruning  
Nebraska Attorney General



Derek Schmidt  
Kansas Attorney General



E. Scott Pruitt  
Oklahoma Attorney General



Jack Conway  
Kentucky Attorney General



Alan Wilson  
South Carolina Attorney General



James D. "Buddy" Caldwell  
Louisiana Attorney General



Peter K. Michael  
Wyoming Attorney General