



E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA

August 10, 2012

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

FREEDOM OF INFORMATION ACT REQUEST

Freedom of Information Officer
U.S. EPA, Records, FOIA and Privacy Branch
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
Hq.foia@epa.
FOIA REQUEST

Dear Sir or Madam:

This is a request under the Freedom of Information Act (5 U.S.C. §552, as amended).

By this letter the States of Oklahoma, Alabama, Arizona, Georgia, Kansas, Nebraska, North Dakota, Michigan, South Carolina, South Dakota, Texas, Utah and Wyoming ("**Requesting States**") are requesting any and all documents (including any and all written or electronic correspondence, audiotapes, electronic records, videotapes, photographs, telephone messages, voice mail messages, e-mails, facsimiles, daily agendas and calendars, information about meetings and/or discussions, whether in-person or over the telephone, agendas, minutes and a list of participants for those meetings and/or discussions, and transcripts and notes of any such meetings and/or discussions) from January 1, 2009 to the date of this letter that discuss or in any way relates to:

- (a) any consideration, proposal or discussions with any Interested Organization (as that term is defined below), or any other non-governmental organization, including citizen organizations, whose purpose or interest may include environmental or natural resource advocacy and policy ("**Other Organizations**"), concerning:
 - i. the scope and application of the EPA Administrator's non-discretionary duty to take certain actions under the Clean Air Act ("**CAA**"), 42 U.S.C. § 7604(a)(2); the Clean Water Act ("**CWA**"), 33 U.S.C. § 1365;

or the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6972;

- ii. the course of action to take with respect to any state implementation plan (“SIP”) required to be submitted to the U.S. Environmental Protection Agency (“EPA”) under the CAA for any State;
- iii. the course of action to be taken concerning a State’s administration of any provision of either the CAA, CWA or RCRA; or
- iv. the course of action to be taken with respect to any administrative or judicial order, decree or waiver entered, or proposed to be entered, under the CAA, CWA or RCRA concerning a State (the “Subject”).

(b) Copies of any and all documents (including any and all written or electronic correspondence, audiotapes, electronic records, videotapes, photographs, telephone messages, voice mail messages, e-mails, facsimiles, daily agendas and calendars, information about meetings and/or discussions, whether in-person or over the telephone, agendas, minutes and a list of participants for those meetings and/or discussions, and transcripts and notes of any such meetings and/or discussions) sent or received by the following EPA offices:

- i. the Office of the Administrator;
- ii. the Office of Air and Radiation;
- iii. the Office of Chemical Safety and Pollution Prevention;
- iv. the Office of Enforcement and Compliance Assurance;
- v. the Office of Environmental Information;
- vi. the Office of General Counsel;
- vii. the Office of Inspector General;
- viii. the Office of International and Tribal Affairs;
- ix. the Office of Research and Development;
- x. the Office of Solid Waste and Emergency Response;
- xi. the Office of Water;
- xii. Region 1;
- xiii. Region 2;
- xiv. Region 3;
- xv. Region 4;
- xvi. Region 5;
- xvii. Region 6;
- xviii. Region 7;
- xix. Region 8;
- xx. Region 9; or

xxi. Region 10.

(including receipt by carbon copy or blind carbon copy), regarding the Subject including, but not limited to, documents sent by or received from individuals representing or employed by the Interested Organizations or Other Organizations.

This request is not meant to be exclusive of any other records which, though not specifically requested, would have a reasonable relationship to the subject matter of this request.

“Interested Organizations” include the:

1. AFL-CIO
2. American Lung Association
3. American Nurses Association
4. Appalachian Center for the Economy and the Environment and Public Justice
5. Appalachian Mountain Club
6. Biodiversity Conservation Alliance
7. Center for Biological Diversity
8. Chesapeake Bay Foundation
9. Coal River Mountain Watch
10. Coalition for Clean Air
11. Coalition for a Safe Environment
12. Colorado Environmental Coalition
13. Conservation Law Foundation
14. Conservation Northwest
15. Defenders of Wildlife
16. Delaware Riverkeeper Network
17. Desert Citizens Against Pollution
18. Dine Citizens Against Ruining Our Environment
19. Door County Environmental Council
20. Environmental Activist League
21. Environment America
22. Environment California
23. Environmental Defense Fund
24. Environmental Integrity Project
25. Environmental Law and Policy Center
26. Farm Labor Organizing Committee
27. Florida Wildlife Federation
28. Friends of Animals
29. Grand Canyon Trust

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30. Greater Yellowstone Coalition
31. Green Law
32. Greenpeace
33. Gulf Restoration Network
34. Habitat Education Center
35. Iowa Environmental Council
36. Izaak Walton League of America
37. Kentucky Environmental Foundation
38. Kentucky Waterways Alliance
39. Louisiana Environmental Action Network
40. Medical Advocates for Healthy Air
41. Michigan Nature Association
42. Migrant Clinicians Network
43. Minnesota Center for Environmental Advocacy
44. Missouri Coalition for the Environment
45. Montana Environmental Information Center
46. Montanans Against Toxic Burning
47. Mossville Environmental Action NOW
48. National Parks Conservation Association
49. National Wildlife Federation
50. Natural Resources Defense Council
51. Natural Resources Council of Maine
52. Northwest Treeplanters and Farmworkers United
53. Northwoods Wilderness Recovery
54. Ohio Environmental Council
55. Oregon Natural Desert Association
56. Our Children's Earth Foundation
57. Pacific Coast Federation of Fishermen's Associations
58. Pesticide Action Network North America
59. Physicians for Social Responsibility
60. Plains Justice
61. Powder River Basin Resource Council
62. Prairie Rivers Network
63. Red Rock Forests
64. Riverkeeper
65. San Juan Citizens Alliance
66. Save the Bay
67. Sierra Club
68. Southern Environmental Law Center
69. Southern Utah Wilderness Alliance
70. Tennessee Clean Water Network
71. United Farm Workers

72. Valley Watch
73. Waterkeeper Alliance
74. Western Colorado Congress
75. Western Resource Advocates
76. Western Watersheds Project
77. WildEarth Guardians
78. Wilderness Society
79. Wilderness Workshop
80. Winter Wildlands Alliance

Reason for FOIA Request

Over the past three years, the EPA has allowed its regulatory agenda to be largely defined by litigation settlements it has entered into with environmental organizations. Specifically, on at least forty-five occasions, EPA and other federal agencies have settled lawsuits (which included paying plaintiffs' attorneys' fees) brought under the CAA, the CWA, the RCRA, and the Endangered Species Act ("ESA"). *See Attachment A.* These settlements take the form of binding Consent Decrees that dictate how and when EPA and other federal agencies must develop stringent new regulations. Unfortunately, States responsible for implementing many of these regulations have little knowledge of or input in this process, which is not consistent with the cooperative federalism structure of federal environmental law.

Out of the forty-five settlements that have been made public, EPA has paid almost \$1 million in attorneys' fees to these groups, while also committing to develop a suite of sweeping new regulations. One EPA Consent Decree led to the promulgation of EPA's costliest regulation ever - the Mercury Air Toxics Standards (MATS). Other Consent Decrees include obligations that define how and when EPA acts on forty-five individual State Regional Haze SIPs - including the imposition of proposed federal implementation plans ("FIPs"). Still other Consent Decrees concern stringent new air and water regulations impacting large segments of American industry; and Consent Decrees with other agencies concern "listing" 674 plant and animal species as "threatened" under the ESA.

Many Consent Decrees authorize EPA to act in a way that is not consistent with current law. For example, Regional Haze Consent Decrees allowed EPA to propose combined Regional Haze SIPs/FIPs - something EPA has not done before in administering the CAA. This is detrimental to the States and "unwinds" the State and federal partnership contained in the CAA.

States affected by these non-governmental organization lawsuits are not included as parties in the suits and when affected States try to intervene, EPA and the environmental groups frequently oppose State intervention. For instance, when the State of North Dakota sought

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to intervene in *Wildearth Guardians v. Jackson* in the U.S. District Court for the Northern District of California (where Wildearth Guardians filed its suit), EPA opposed the intervention despite the fact that the case involved how and when EPA should act on North Dakota's proposed Regional Haze SIP.

State Attorneys General from the Requesting States are in the process of evaluating EPA's alarming practice of relying on Consent Decrees to deny the States their important role as a partner with EPA in implementing federal environmental law. Not only does EPA's action harm and jeopardize the States' role as a partner with EPA, but it harms the interests of the citizens of the Requesting States. Our citizens rely on and expect the States to implement federal environmental law. Often, these implementation efforts require the States to design plans to meet the individual circumstances of the State, while protecting and advancing the environmental goals and requirements of federal environmental law. When EPA coordinates with non-governmental organizations regarding how federal environmental law should be applied and implemented in an individual State and excludes the State from that effort the State and its citizens are harmed.

Rather than make individual FOIA requests, the Requesting States are making one request for the release of documents with the Interested Organizations and Other Organizations concerning the Subject. The Requesting States have lobbied, litigated, and publicly commented on federal actions which directly affect their individual State interests and those of their citizens. The requested documents are sought in order to more clearly illuminate the operations and activities of EPA. As such, release of the requested documents will significantly contribute to public understanding and oversight of the EPA's operations, particularly regarding the quality of the EPA's activities and the efficacy of both Congressional directives and EPA policies and regulations relating to the Requesting States.

The Requesting States will analyze the data presented in the released documents and our staff of experts will produce a report as part of our ongoing review of EPA's operations. The report will be disseminated to others in our States as well as disseminated to the media and Congress as a component of our active involvement in State efforts addressing environmental issues.

The Requesting States plan to make these documents available to the public at the University Libraries in the respective Requesting States. As these facilities are open to the general public, many people will thereby have access to the information contained in the materials which are the subject of this request. Further, most, if not all, of these Libraries are a Federal Repository, its Congressionally certified status as a resource to foster openness in government, as well as its role in facilitating the teaching and research occurring at the Universities, will be well served. These materials will not be used for commercial use or gain.

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In light of the ongoing and contentious public policy controversy regarding EPA's coordination and planning its regulatory agenda with non-governmental organizations, the Requesting States note that time is of the essence in this matter. There is a great need for prompt disclosure so that the released information may more adequately inform public understanding and discussion of EPA's actions.

In the event that access to any of the requested records is denied, please note that the FOIA provides that if only portions of a requested file are exempted from release, the remainder must still be released. We therefore request that the Requesting States be provided with all non-exempt portions which are reasonably segregable. We further request that you describe the deleted material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies in this instance. Please separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements will be helpful in deciding whether to appeal an adverse determination, and in formulating arguments in case an appeal is taken. The EPA's written justification might also help to avoid unnecessary litigation. We of course reserve our right to appeal the withholding or deletion of any information and expect that you will list the office and address where such an appeal can be sent.

We anticipate, however, that you will make the requested materials available within the statutorily prescribed period. We thus also request that you waive any applicable fees since disclosure meets the standard for waiver of fees as it is in the public interest. *See* 40 C.F.R. § 2.107(l). Specifically, this request concerns "the operations or activities of the government;" disclosure is "likely to contribute" to an understanding of government operations or activities; disclosure will contribute to "public understanding;" the disclosure is likely to contribute "significantly" to public understanding of government operations and activities; and the States have no commercial interest in disclosure of the documents – the Requesting States' interest is to facilitate and promote the public interest. 40 C.F.R. § 2.107(2)(i),(iv). In this regard, we reiterate that we have no intention of using the information disclosed for financial gain. If for some reason, the fee waiver request is denied, while reserving our right to appeal such a decision, the Requesting States are willing to pay \$5.00 (five dollars) to cover costs of document search and duplication.

Access to the requested records should be granted within twenty (20) working days from the date of your receipt. Failure to respond in a timely manner shall be viewed as a denial of this request and the requesters may immediately file an administrative appeal.

Finally, the Requesting States ask that all correspondence regarding this FOIA request and all documents produced in response to this request be directed to the Attorney General of the State of Oklahoma.

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Thanking you in advance for your prompt reply.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. Scott Pruitt", with a long horizontal flourish extending to the right.

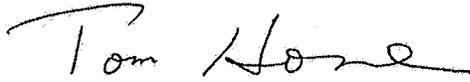
E. Scott Pruitt
Oklahoma Attorney General



Luther Strange
Attorney General
State of Alabama



Wayne Stenehjem
Attorney General
State of North Dakota



Tom Horne
Attorney General
State of Arizona



Alan Wilson
Attorney General
State of South Carolina



Sam Olens
Attorney General
State of Georgia



Marty J. Jackley
Attorney General
State of South Dakota



Derek Schmidt
Attorney General
State of Kansas



Gregg Abbott
Attorney General
State of Texas



Bill Schuette
Attorney General
State of Michigan



Mark Shurtleff
Attorney General
State of Utah



Jon Bruning
Attorney General
State of Nebraska



Gregory A. Phillips
Attorney General
State of Wyoming