December 6, 2013

Via Federal Express (with enclosures) and Electronic Mail to:

Freedom of Information Officer
U.S. EPA Region 5 (MI-9J)
77 West Jackson Blvd.
Chicago, IL 60604-3590
r5foia@epa.gov

Re: FOIA Request for Records Concerning Petcoke and Coal Dust on Chicago's South Side

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable EPA regulations at cite 40 C.F.R. § 2.100-2.406.

I. Description of Records Sought

Please produce records[1] created or gathered after January 1, 2010 in EPA's possession, custody or control that concern the public health and environmental impacts of storing petcoke and/or coal at KCBX Terminals, located at 10730 South Burley Avenue, Chicago, Illinois, and at Beemsterboer Slag Co., located at 2900 E. 106th St., Chicago, Illinois (collectively "the facilities"). This includes, without limitation, records concerning:

1. EPA's inspections, inquiries, or investigations[2] of the facilities, including but not limited to the investigation referenced in Time Sfondeles, "U.S. EPA

[1] "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request is addressed to Region 5 because Region 5 appears (based on presently public information) to be the most likely source of responsive records, but seeks responsive records in the custody of any EPA office, including Headquarters offices.

[2] "Inspections, inquiries, or investigations" does not include the June 2013 EPA Report of an Unannounced Inspection of KCBX Terminals Company, from a May 2012 inspection, which is already public record. "Inspections, inquiries, or investigations"

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Investigating 'Petcoke' Matter," Chicago Sun-Times (Nov. 15, 2013) (attached as Exhibit A);

2. Air, water, and other pollution monitoring at the facilities or on Chicago's South East Side; and
3. Any new air pollution monitoring system ordered by EPA, including but not limited to that referenced in Michael Hawthorne, "Feds Order Pollution Monitors near S. Side Refinery Waste; Measurements will Help Determine if Storage Companies Violate Clean Air Act," Chicago Tribune (Nov. 17, 2013) (Ex. B).

II. Request for a Fee Waiver

NRDC requests that EPA waive the fee that it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. §2.107(l)(1). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 40 C.F.R. § 2.107(c)(1)(iii).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would 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); 40 C.F.R. §40 C.F.R. § 2.107(l)(1). Each of the four factors used by EPA to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 40 C.F.R. § 2.107(l)(2).

1. Subject of the request

The records requested here pertain to the public health and environmental impacts of petcoke and coal stored at KCBX Terminals and Beemsterboer Slag Co.. They include records reflecting EPA's investigation of the facilities, EPA's existing pollution monitoring information for these facilities, and information on the new air monitoring system EPA has ordered. The requested records thus directly concern "the operations or activities of the government." 40 C.F.R. § 2.107(l)(2)(i).

2. Informative value of the information to be disclosed

The requested records are "'likely to contribute to'" the public's understanding of government operations and activities, 40 C.F.R. § 2.107(l)(2)(ii). The public does not currently possess comprehensive information regarding the government's role in

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does include, without limitation, any documents related to the May 2012 inspection which are not public record.

addressing public health and environmental concerns related to the petcoke and/or coal dust pollution.

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the public health and environmental impacts of the petcoke and/or coal dust as further discussed below. However, if EPA were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. Contribution to an understanding of the subject by the public is likely to result from disclosure.

Because NRDC is a "representative of the news media," as explained in Part II.C below, EPA must presume that this disclosure is likely to contribute to public understanding of its subject. 40 C.F.R. § 2.107(l)(2)(iii).

However, even if NRDC were not a media requester, NRDC's expertise in environmental science, law, and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability and will to use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal.

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are "a broad audience of persons interested in the subject" of environmental science, law, and policy, 40 C.F.R. § 2.107(l)(2)(iii), and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad.", 40 C.F.R. § 2.107(l)(2)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information on environmental science, law, and policy through many channels. As of September 2013, these include, but are not limited to the following:

- NRDC's website, available at http://www.nrdc.org (homepage at Att. 1), which is updated daily and draws approximately 1,142,700 page views and 478,000 unique visitors per month.
- *OnEarth* magazine (sample issue at Att. 2), which is distributed to approximately 130,000 subscribers, for sale at newsstands and bookstores,

and available free of charge at http://www.onearth.org (a site that itself has about 33,700 email subscribers and receives more than 45,600 unique visitors per month).

- *Nature's Voice* newsletter on current environmental issues, (sample issue at Att. 3), which is distributed five times a year to NRDC's more than one million members and online activists, and is available online at http://www.nrdc.org/naturesvoice/default.asp.
- *Earth Action* email list (sample email at Att. 4), which has more than 179,000 subscribers who receive biweekly information on urgent environmental issues. This information is also made available through NRDC's online Action Center at http://www.nrdc.org/action/default.asp (Att. 5).
- *This Green Life*, which is an electronic newsletter on environmentally sustainable living. It is distributed by email to 52,000 subscribers (sample email at Att. 6) and made available online at http://www.nrdc.org/thisgreenlife/default.asp (Att. 7).
- *NRDC Online*, which is a semimonthly electronic environmental newsletter distributed by e-mail to more than 50,400 subscribers, at http://www.nrdc.org/newsletter (Att. 8).
- "Switchboard," available at http://switchboard.nrdc.org (Att. 9), which is a staff blogging site that is updated daily and features more than 130 bloggers writing about current environmental issues. The blogs draw approximately 175,00 page views and 109,200 unique visitors per month; Switchboard's RSS feeds have approximately 7,500 subscribers; and Switchboard posts appear on websites of other major internet media outlets, such as "The Huffington Post," at http://www.huffingtonpost.com (sample post at Att. 10).
- NRDC's profiles on "Facebook," at http://www.facebook.com/nrdc.org (Att. 11), and "Twitter," at http://www.twitter.com/nrdc (Att. 12), are updated daily and have approximately 210,000 fans and 105,900 followers, respectively.

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Stories from the Gulf*, narrated by Robert Redford and *Acid Test*, narrated by Sigourney Weaver; participates in press conferences and interviews with reporters and editorial writers; and has approximately thirty staff members dedicated to communications work, *see* list of select communications staff at http://www.nrdc.org/about/staff.asp (Att. 13).

NRDC employees provide Congressional testimony; appear on television, radio and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Testimony of David Doniger, NRDC Climate Center Policy Director, before United States House Subcommittee on Energy and Environment, Apr. 24, 2009 (Att. 14);

- Transcript, "Pollution Still a Hazard to U.S. Beaches," CBS, *CBS NEWS*, July 29, 2009 (featuring NRDC Water Program Co-Director Nancy Stoner) (Att. 15);
- Transcript, "Companies Quit U.S. Chamber Over Climate Policy," National Public Radio, Oct. 6, 2009 (featuring NRDC Climate Campaign Director Pete Altman) (Att. 16);
- List of KCRW appearances by NRDC China Program Director Barbara Finamore, NRDC Water Program Senior Policy Analyst Barry Nelson, and NRDC Climate Center Director Dan Lashof (Att. 17);
- Conference brochure, "World Business Summit on Climate Change," May 24-26, 2009 (featuring NRDC Director for Market Innovation Rick Duke at 9) (Att. 18);
- Article, "For climate pact, a step back is sold as first step," *Chicago Tribune*, Nov. 22, 2009 (featuring NRDC International Climate Policy Director Jake Schmidt) (Att. 19);
- Article, "Court Showdown Looms for NYC Electronics Recycling Law," *N.Y. Times*, Jan. 5, 2010 (featuring NRDC Attorney Kate Sinding) (Att. 20);
- Article, "Environmental groups try to block parts of California's green building code," *L.A. Times*, Jan. 11, 2010 (Att. 21);
- Article, "An Inconceivable Truth," *Vogue*, Aug. 2007 (featuring NRDC Public Health Scientist Sarah Janssen) (Att. 22);
- Article, "Green State of the Union," *Deliver Magazine*, Sept. 2009 (written by NRDC communications staff member Francesca Koe) (Att. 23);
- Article, "Is there a 'proper level' of compliance with environmental law?" *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 24);
- Research article, "Outcomes of the California Ban on Pharmaceutical Lindane: Clinical and Ecological Impacts," *Environmental Health Perspectives*, March 2008 (co-authored by NRDC Public Health Scientist Sarah Janssen and NRDC Public Health Senior Scientist Gina Solomon) (Att. 25);
- Publisher's notes to *Clean Energy Common Sense: An American Call to Action on Global Climate Change* (Rowman & Littlefield Publishers, Inc. 2009), by NRDC President Frances Beinecke (Att. 26); and,
- NRDC: Publications in Print, http://www.nrdc.org/publications (Att. 27).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

(1) In October 2008, NRDC issued a report assessing the degree of enforcement of California's environmental and public health laws. This report, *An Uneven Shield: The Record of Enforcement and Violations Under California's Environmental, Health, and Workplace Safety Laws*, examined data on known violations and law enforcement responses under six critical pollution, health, and workplace safety programs (Att. 28). Much of the data analyzed in the study was obtained through formal FOIA requests; some of it was synthesized from other sources. *See id.* at pp. 4, 16.

(2) NRDC obtained, through a court-enforced FOIA request, records of the operations of the Bush administration's Energy Task Force, headed by Vice President Dick Cheney. It made those records available, along with analysis of selected excerpts and links to the administration's index of withheld documents, on NRDC's website at http://www.nrdc.org/air/energy/taskforce/tfinx.asp (Att. 29). NRDC's efforts helped to inform the public about an issue that, even before the records' release, had attracted considerable attention. *See, e.g.*, Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L.A. Times*, Mar. 28, 2002, at A22 (Att. 30); Bennett Roth, "Houston Energy-Drilling Firm Appears in Documents from Energy Department," *Houston Chronicle*, Apr. 12, 2002 (Att. 31).

(3) NRDC obtained, through a FOIA request, a memorandum by ExxonMobil advocating the replacement of a highly respected atmospheric scientist, Dr. Robert Watson, as the head of the Intergovernmental Panel on Climate Change. NRDC used this memorandum to help inform the public about what may have been behind the decision by the Bush administration to replace Dr. Watson. *See* NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002 (Att. 32); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19 (Att. 33).

(4) NRDC incorporated information obtained through FOIA into a 2005 report, published and provided free of charge at NRDC's website, *see* http://www.nrdc.org/wildlife/marine/sound/contents.asp, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 34). The report also relied upon and synthesized information from other sources. Since the report's publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, "Protest Raised over New Tests of Naval Sonar," National Public Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 35).

(5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States' and other nations' nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States' plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, "The Protection Paradox," *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 36).

(6) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA's failures to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See* http://www.nrdc.org/health/atrazine/files/atrazine10.pdf (Att. 37); *see also* William Souder, "It's Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?" *Harper's Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 38).

(7) NRDC has obtained, through FOIA and other sources, information on the levels of arsenic in drinking water supplies across the country. NRDC synthesized that information into a report, *Arsenic and Old Laws* (2000), printed and made available online through NRDC's website, *see* http://www.nrdc.org/water/drinking/arsenic/aolinx.asp (Att. 39), and provided analysis describing its significance and guiding interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; *see also* Steve LaRue, "EPA Aims to Cut Levels of Arsenic in Well Water," *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 40).

(8) In 2000, NRDC used information obtained through FOIA to publish a report analyzing the impacts of manure pollution from large livestock feedlots on human health, fish and wildlife. *See* NRDC, *Spills & Kills*, Aug. 2000 (Att. 41).

(9) In 1999, NRDC obtained, through FOIA, a Defense Department document, *History of the Custody and Deployment of Nuclear Weapons: July 1945 through September 1977*. The document attracted significant press attention once it was disclosed. *See, e.g.*, Walter Pincus, "Study Says U.S. Secretly Placed Bombs; Cold War Deployments Affected Mostly Allies," *Washington Post* (Oct. 20, 1999) at A3 (Att. 42). One of NRDC's nuclear scientists, Robert Norris, published a detailed analysis of this document explaining its significance to the public. *See* Robert S. Norris, William M. Arkin, and William Burr, "Where They Were," *Bulletin of Atomic Scientists*, Nov./Dec. 1999 (Att. 43).

(10) In 1996, NRDC obtained, through FOIA, test results regarding lead levels in the District of Columbia's drinking water supplies. NRDC made the test results public along with analysis explaining the significance of the results. *See* D'Vera Cohn, "Tap Water Safeguards Still Stalled; City Failed to Tell Some Residents of Excess Lead Contamination," *Washington Post*, Apr. 18, 1996, at J1 (Att. 44).

(11) In 1989, NRDC obtained, through FOIA, testimony, previously suppressed by the first Bush administration, by federal experts who opposed oil drilling off the coasts of California and Florida. *See* Larry Liebert, "Oil Testimony Reportedly Quashed; Environmentalists say Federal Experts Pressured by Bush," *Orange County Register*, Oct. 5, 1989, at A6 (Att. 45).

(12) In 1988, NRDC obtained, through FOIA, a report by the U.S. Fish and Wildlife Service that declared that the government's review of offshore oil drilling in Northern California was incomplete and overly optimistic. Reagan administration officials had tried to keep the report secret and then repudiated it upon its release. *See* Eric Lichtblau, "Federal Report Blasts Offshore Oil Studies," *L.A. Times*, June 4, 1988, at A32 (Att. 46).

(13) In 1982, NRDC obtained, through a FOIA request, an EPA memorandum stating that most air pollution monitors have repeatedly underestimated levels of toxic lead in the air. NRDC used the memorandum to inform the public about the consequences of EPA's proposal to relax restrictions on lead in gasoline. *See* Sandra Sugawara, "Lead in Air is Undermeasured, EPA Section Chief's Memo Says," *Washington Post*, July 11, 1982, at A6 (Att. 47).[3]

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

4. Significance of the contribution to public understanding

The records requested shed light on a matter of considerable public interest and concern: the public health and environmental impacts of petcoke and/or coal pollution from the KCBX and Beemsterboer facilities.

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[3] Information NRDC obtained through FOIA requests resulted in other articles, in addition to those referenced above, see, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 48); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 49); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 50).

These impacts have generated great public interest and controversy, even nationally. *See, e.g.*, Ben Lefebvre and Ben Kesling "Dustup Grows over Refinery Product," *Wall Street Jounral* (Nov. 26, 2013) (attached as Ex. C). Local residents, public interest groups, and politicians have all voiced their concerns. *See, e.g.*, Aaron Cynic "Public Pressure over South Side Petcoke Piles Continues to Build," *Progress Illinois* (Nov. 19, 2013) (Ex. D). The City of Chicago's Department of Public Health has begun drafting new regulations for storage and maintenance of petcoke. *See, e.g.*, *CBS Chicago* "Mayor Orders Health Department to Draft Petcoke Regulations," (Nov. 19, 2013) (Ex. E). The City and the Illinois Attorney General's Office have also filed lawsuits over pollution from the KCBX and Beemsterboer facilities. *See, e.g.*, Michael Hawthorne "City, State Seek to Shutdown Petcoke Pile," *Chicago Tribune* (Nov. 23, 2013) (Ex. F).

According to press reports, EPA and Illinois EPA have both initiated investigations into the facilities. *See, e.g.*, Ex. A. EPA's investigation has reportedly included requests to both facilities for petcoke emission data that EPA intends to use to determine whether the facilities are complying with the Clean Air Act. *See, e.g.*, *id.* And more recently, EPA has asked both facilities to install new pollution monitors. See, e.g., Ex. B.

Despite the attention and controversy, the public lacks adequate information relating to petcoke and/or coal pollution from the facilities and the associated threats to public health and the environment. Public understanding of these issues and of EPA's action (or inaction) in response to these issues would be significantly enhanced by disclosure of the requested records concerning these topics. For example, disclosure of additional air monitoring data will help the public to more effectively understand the severity of the threats posed by air pollution from the facilities. Disclosure of additional information about the new air monitoring will help the public to better understand and assess the efficacy of the monitoring. This is an especially important time to provide the public with additional information: according to press reports, petcoke storage at KCBX Terminals is set to triple next year. See, e.g., Tammy Webber "Piles of Midwest 'PetCoke' Raising Residents' Ire," *Associated Press* (Nov. 25, 2013) (Ex. G). The first fee waiver prerequisite is met.

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii);, 40 C.F.R. § 2.107(l)(1), (3). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. "Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'" *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (internal citation omitted); *see Natural Res. Def. Council v. United States Envtl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008) (noting EPA acquiescence to this interpretation of legislative intent). NRDC wishes to serve the public by reviewing, analyzing and disclosing newsworthy and presently non-

public information about environmental science, law, and policy. As noted at Part II.A, any work done by EPA on petcoke and/or coal dust pollution relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of petcoke and/or coal dust pollution and associated threats to human health and the environment.

C. NRDC Is a Media Requester

Even if EPA denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and EPA's FOIA regulations, 40 C.F.R. § 2.107(c)(1)(iii); *see also* 40 C.F.R. § 2.107(b)(6) (defining "[r]epresentative of the news media"). *See Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a "non-profit public interest organization" qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 51) (granting NRDC media requester status).

NRDC is in part organized and operated to publish or transmit news to the public. As described earlier in this request, NRDC publishes a quarterly magazine, *OnEarth*, which has approximately 150,000 subscribers, is available at newsstands and bookstores, and has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. *See* 40 C.F.R. § 2.107(b)(6) ("Examples of news media include . . . publishers of periodicals.").NRDC maintains a significant additional communications presence on the internet through its staff blogging site, "Switchboard," which is updated daily and features more than 130 bloggers writing about current environmental issues, and through daily news messaging on "Twitter" and "Facebook." *See* OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that "as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities"). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs approximately thirty staff dedicated full-time to communications with the public, including accomplished journalists and editors, *see* list of select communications staff at http://www.nrdc.org/about/staff.asp (Att. 13). These staff rely on information acquired under FOIA and through other means. That NRDC is a public interest advocacy organization is inconsequential so long as "its activities qualify as those of a representative of news media," and NRDC's do. *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 12. Public interest organizations meeting the requirements "are regularly granted news representative status." *Serv. Women's Action Network v. Dep't of Def.*, 888 F. Supp. 2d 282,

287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).[4]

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC's publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured in its *OnEarth* magazine, newsletters, blogs, and other NRDC-operated media outlets. NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above irrespective of the status and outcome of your evaluation of NRDC's fee category status and fee waiver request. In order to prevent delay in EPA's provision of the requested records, NRDC states that it will, if necessary and under protest, pay fees in accordance with EPA's FOIA regulations at 40 C.F.R. § 2.107(c)(1)(iv) for all or a portion of the requested records. *See* 40 C.F.R. § 2.107(l)(4). Please consult with NRDC, however, before undertaking any action that would cause the fee to exceed $250. Such payment will not constitute any waiver of NRDC's right to seek administrative or judicial review of any denial of its fee waiver request and/or rejection of its fee category assertion.

IV. Conclusion

We trust that, in responding to this request, EPA will comply with all relevant deadlines and other obligations set forth in FOIA and EPA's FOIA regulations. *See, e.g.*, 40 C.F.R. § 2.104 (describing response deadlines).

Please produce the records above by emailing or mailing them to me at the NRDC office address listed below. Please produce them on a rolling basis; at no point should EPA's search for—or deliberations concerning—certain records delay the production of others that EPA has already retrieved and elected to produce. In the event that EPA concludes that some of the records requested above may already be publicly available, we will be happy to discuss those conclusions. Please do not hesitate to call or email with questions.

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[4] To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions. I can be reached at 312-651-7906 and skyle@nrdc.org.

Thank you for your prompt attention to this request.

Sincerely,

Selena Kyle, Senior Attorney
Blake Korb, Legal Intern
Natural Resources Defense Council, Inc.
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Enclosures (sent via Federal Express on CD):

Attachments 1 through 51 (single .pdf file)
Exhibits A through G (single .pdf file); also sent via email