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VIA FIRST CLASS MAIL AND E-MAIL (R9FOIA@EPA.GOV)

Regional Freedom of Information Officer
U.S. EPA, REGION 9
75 Hawthorne Street (OPA-2)
San Francisco, CA 94105

Re: Freedom of Information Act Request
Client-Matter No. 43983.00003

Dear Regional Freedom of Information Officer:

We respectfully submit this request for information pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). As you might know, the United States Environmental Protection Agency ("USEPA") adheres to a presumption of openness in responding to requests of information under FOIA.[1] The presumption of openness follows an executive memorandum instructing all federal agencies to adopt a presumption of disclosure when administering requests under FOIA, which provides:

> All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. (*See* Memorandum from President Obama to the Heads of Executive Departments and Agencies regarding Freedom of Information Act, January 21, 2009.)[2]

The United States Attorney General subsequently issued a memorandum to the Executive Departments and Agencies emphasizing that "an agency should not withhold information simply because it may do so legally" and that "whenever an agency determines that it cannot make full disclosure of a requested record, it must consider whether it can make partial disclosure [and] be mindful that the FOIA requires them to take reasonable steps to segregate and release nonexempt

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[1] U.S. ENVIRONMENTAL PROTECTION AGENCY, *Freedom of Information Act (FOIA)*, Learn about FOIA, https://www.epa.gov/foia/learn-about-foia#openness (last visited October 2, 2018).

[2] This memorandum is directly available at https://obamawhitehouse.archives.gov/the-press-office/freedom-information-act (last visited October 2, 2018) and is also located on the United States Environmental Protection Agency's website under 'FOIA Memoranda' at https://www.epa.gov/foia/foia-resources#policy (last visited October 2, 2018).

information." (*See* Memorandum for Heads of Executive Departments and Agencies, March 19, 2009.)[3]

Definitions

As used in this request, the term "record(s)" includes, without limitation, any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail ("e-mail") or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. This term includes, but is not limited to, all correspondence, notes, memoranda, and e-mails sent or received directly or by copy.

As used in this request, the term "pertaining to" means, without limitation, in any way mentioning, containing, opining about, constituting, explaining, pertaining to, referring to, alluding to, responding to, elaborating upon, concerning, memorializing, proving, tending to prove, supporting, refuting, evidencing, connected with, commenting on, regarding, discussing, showing, describing, reflecting, analyzing, recording, including, mentioning, setting forth, in respect of, and about.

As used in this request, the terms "you" and "your" shall mean all Divisions of the United States Environmental Protection Agency, Regional 9, and all employees, managers, agents, representatives, investigators, consultants, attorneys, and any other person or entity acting on behalf of the United States Environmental Protection Agency ("USEPA").

Information Requested

Please provide copies of all records in your possession or control that are responsive to the following categories of information requested:

1. Any and all correspondence between you and the State Water Resources Control Board ("SWRCB") regarding the State of California's chronic toxicity testing including, but not limited to, documents related to the Test of Significant Toxicity ("TST") for use in reasonable potential analyses ("RPA") and National Pollutant Discharge Elimination System ("NPDES") effluent testing, and regarding the SWRCB's proposed Toxicity Policy, dated June 8, 2015, or thereafter.

2. Any and all records related to chronic toxicity testing, including documents related to the use of the TST.

[3] This memorandum is directly available at https://www.justice.gov/sites/default/files/ag/legacy/2009/06/24/foia-memo-march2009.pdf (last visited October 2, 2018) and is also located on the United States Environmental Protection Agency's website under 'General FOIA Guidance' at https://www.epa.gov/foia/foia-resources#policy (last visited October 2, 2018).

3. Any and all records pertaining to the pending case in the United States District Court Eastern District of California, *Southern California Alliance of POTWs, et al. v. United States Environmental Protection Agency, et al.*, Case No. 2:14-CV-01513-MCE-DAD, dated June 8, 2015, or thereafter.

As required by the Act, please provide a response within twenty (20) days from the receipt of this letter, stating your determination regarding this request. *See* 5 U.S.C. § 552(a)(6)(A).

Should you decide any of the requested material is exempt from disclosure under the Act, please describe in detail the material withheld and specify the legal basis and authority for withholding the requested material. Such description should include, but need not be limited to: the type of record and number of pages; the full name and title of the author of the record; the date of the record; the full name and title of the addressee of the record; the full name and title of all persons to whom the record was circulated; the title, "re" line, and headings from within the record, unless doing so would reveal properly exempted material; a detailed description of the entire content of the record; the custodian of the record at the time of this request; and the number of the record category to which the record responds. *See* 5 U.S.C. § 552(b); *Coastal Corp. v. Department of Energy*, 496 F. Supp. 57, 60-64 (D. Del. 1980); *ACLU Foundation v. Department of Justice*, 833 F. Supp. 399, 402-405 (S.D.N.Y. 1993).

Please also provide us with all non-exempt portions of all responsive records that are reasonably segregable from the withheld material, identifying the length and location of the withheld portion on the non-withheld portion of the record. 5 U.S.C. § 552(b).

If the cost of duplication of the responsive documents exceeds $250, please contact me regarding the cost as we may prefer to review the responsive documents and, after review, bring in a copy service or pay the cost of duplication for only those documents we select. *See* 5 U.S.C. § 552 (a)(4)(A)(v).

Please contact me by phone at (916) 520-5376 or by email at mthorme@downeybrand.com, if you have any questions regarding this request, or would like to discuss how we might assist in your response to this request. We would be happy to work with you to obtain this information in an expedited manner through clarifications of any issues pertaining to these requests. Thank you for your prompt attention to this matter.

Very truly yours,

DOWNEY BRAND LLP

Melissa A. Thorme

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