December 22, 2017

By Email and FOIA Online

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
Email: **hq.foia@epa.gov**

Re: Freedom of Information request for information related to Agricultural Worker Protection Standard

Dear Freedom of Information Officer:

On behalf of itself and Farmworker Justice, Earthjustice submits this request for records in accordance with the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

In accordance with FOIA, please provide us with all of the following records:

1) An unredacted copy of the full transcript of the Pesticide Program Dialogue Committee meeting that took place November 1–2, 2017 ("November 2017 PPDC Meeting" or "Meeting"), including but not limited to transcripts of all sessions, public comment periods, breaks, and introductory or closing remarks during the meeting;

2) An unredacted copy of the full audio recording of the November 2017 PPDC Meeting, including but not limited to recordings of all sessions, public comment periods, breaks, and introductory or closing remarks during the meeting;

3) Unredacted copies of all notes taken by any EPA staff present at Session 7 ("Worker Protection Standard Final Rule") and/or Session 9 ("Certification of Pesticide Applicators Proposed Rule") of the November 2017 PPDC Meeting, such staff including but not limited to Nancy Beck, Richard P. Keigwin, Charlotte Bertrand, and Dea Zimmerman; and

4) Any emails, calendar entries, correspondence, and government records reflecting meetings or planned meetings from January 20, 2017 to the date of this request between (1) EPA Administrator Scott Pruitt; (2) EPA Chief of Staff Ryan Jackson; (3) EPA Acting Principal Deputy Assistant Administrator Charlotte Bertrand; (4) EPA Office of Chemical Safety and Pollution Prevention Deputy Assistant Administrator Nancy Beck; (5) EPA Office of Chemical Safety and Pollution Prevention Acting Assistant Administrator Wendy Cleland-Hamnett; (6) former EPA contractor Michael L. Dourson; (7) EPA Office of Pesticide Programs Director Richard P. Keigwin; and/or (8) EPA Certification of Worker Protection Branch Chief Kevin Keaney with the employees,

members, officials or contractors of the following entities, or entities who have been represented by the following entities within the past 5 years:

a. The American Farm Bureau Federation
b. The National Association of State Departments of Agriculture ("NASDA")
c. Association of American Pesticide Control Officials ("AAPCO")
d. CropLife America
e. National Council of Agricultural Employers ("NCAE")
f. National Agricultural Aviation Association ("NAAA")
g. Oregonians for Food and Shelter
h. State-based Farm Bureau associations
i. State departments of agriculture

The use of the word "record" above includes, but is not limited to, documents in all forms (including electronic), information, emails, faxes, letters, comments, reports, summaries of telephone conversations, handwritten notes, meeting minutes, or any other materials.

The use of the word "unredacted" above means that we are seeking full disclosure of all information in the requested record. In the event that you determine that you can disclose only some of the information contained in a record that falls within the scope of this request, please provide us with a copy of the record with only the information that you have determined to be properly treated as confidential redacted.

FEE WAIVER REQUEST

Pursuant to 5 U.S.C. § 552, we request a fee waiver because "disclosure of the requested 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." 40 C.F.R. § 2.107(l)(1). As demonstrated below, all of the four factors related to the first fee waiver requirement, as specified in EPA's FOIA regulations at 40 C.F.R. § 2.107(l)(2)(i)–(iv), weigh in favor of granting our fee waiver request.

Factor 1: The Requested Records Concern the Operations or Activities of the Federal Government.

The subject matter of the requested records concerns "identifiable operations or activities of the Federal government," 40 C.F.R. § 2.107(l)(2)(i), insofar as the requests relate to a public meeting of a Federal Advisory Committee pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, and correspondence and meetings between EPA and its stakeholders.

Factor 2: Disclosure of the Requested Records is Likely to Contribute to Public Understanding of Government Operations or Activities.

Disclosure of the requested records is "likely to contribute" to an "increased public understanding," 40 C.F.R. § 2.107(l)(2)(ii), of government operations or activities because such disclosure will enable the requesters and the public to understand the issues and comments raised during a Federal Advisory Committee public meeting, whether EPA officials have held private meetings on related issues, and how those private meetings may have influenced shifts in EPA policy. These issues include EPA's plans to revise the Worker Protection Standard Final Rule, 80 Fed. Reg. 67,496 (Nov. 2, 2015), and

the Certification of Pesticide Applicators Final Rule, 82 Fed. Reg. 952 (Jan. 4, 2017). This information is not already accessible through EPA's website. *See* Factor 4, below.

Factor 3: Disclosure of the Requested Records Will Contribute to the Understanding of a Broad Audience of Persons Interested in the Government's Regulation of Pesticides and their Application.

Disclosure will "contribute to the understanding of a reasonably broad audience of persons interested in" learning about the Government's efforts to ensure that pesticides are applied in a manner that is protective of human health. Each of the requesting organizations has the ability and intent to convey information obtained through this request to the public.

Earthjustice has "expertise" related to regulation of pesticides and the "ability and intention to convey this information to the public." 40 C.F.R. § 2.107(l)(2)(iii). In particular, Earthjustice is a national nonprofit environmental law firm, which has made safeguarding the environment, workers, and the health of endangered species from pesticide exposures one of its top priorities. Earthjustice has developed expertise in this area. In order to further its work to protect against the dangers of pesticide exposures, Earthjustice has brought numerous lawsuits, represented amici in other lawsuits, and filed several petitions with EPA. *See, e.g., Pineros y Campesinos Unidos del Noroeste v. Pruitt*, No. 3:17-cv-03434 (filed June 14, 2017 N.D. Cal.) (representing plaintiffs in challenge to delay of certified pesticide applicator rule); *Dow Agrosciences LLC v. National Marine Fisheries Service*, 414 Fed. Appx. 514 (4th Cir. 2011) (represented amici in defense of National Marine Fisheries Service's biological opinion that pesticide manufacturers' insecticides would destroy or harm Pacific salmonids and their habitat); *Northwest Coalition for Alternatives to Pesticides v. U.S. E.P.A.*, 544 F.3d 1043 (9th Cir. 2008) (represented plaintiffs in case seeking review of EPA order denying objections raised to tolerances established for seven pesticides used mostly on fruit and vegetable crops); *United Farm Workers v. Administrator*, slip op., 2010 WL 1293342 (March 31, 2010 N.D. Cal.) (represented plaintiffs in challenge to EPA's re-registration of pesticide chlorpyrifos); Because of its expertise in this area, Earthjustice is well-prepared to evaluate the requested records once they are received. In addition, Earthjustice has mechanisms in place to share information obtained from the requested records with the general public and with other interested organizations, such as through its advocacy campaign devoted to the issue of pesticides. *See* https://earthjustice.org/advocacy-campaigns/pesticides.

Earthjustice can review the information it receives, analyze it, and either write an entry for the Earthjustice website (which receives approximately 830,000 page views per month), highlight the information in a monthly email newsletter (with an average of 200,000 views), or write an article for publication in the Earthjustice quarterly print magazine (which has a circulation of approximately 100,000 people). Further, Earthjustice has collaborated with a large number of farmworker groups in the past, like farmworker unions and advocacy organizations, and can disseminate the information to these interested groups. Finally, Earthjustice's full-time health campaigner can disseminate newsworthy information obtained from this request to the media, and Earthjustice's full-time health lobbyist can provide relevant information obtained from this request to elected officials in Washington.

Disclosure of these records to Farmworker Justice will also "contribute to the understanding of a reasonably broad audience of persons interested in the subject," 40 C.F.R. § 2.107(*l*)(2)(iii), because Farmworker Justice's core mission is the promotion and protection of farmworker rights primarily through the dissemination of information to farmworkers, their advocates, and the public at large.

Farmworker Justice is a non-profit organization that serves migrant and seasonal farmworkers in the United States. It strives to improve farmworkers' living and working conditions through the dissemination of information to worker advocates, government representatives, the general public and the workers themselves. Farmworker Justice has established itself as a trusted source of clear, reliable information, data, and analysis on farmworker issues for the national and regional media. Farmworker Justice's goal is to expand and improve media coverage of farmworker issues, thus broadening public understanding of farmworker health, labor and immigration policy. In addition to media coverage, Farmworker Justice disseminates information through policy reports and briefs, newsletters, email list-serves, and presentations at conferences. Farmworker Justice also posts information on its website, https://www.farmworkerjustice.org/, which averages 12,000 visitors per month. Farmworker Justice also has a blog, https://www.farmworkerjustice.org/fj-blog/, which receives about 1,500 visits a month. In addition to its own publications, Farmworker Justice contributes articles to the publications of other organizations, including those whose mission involves public health, immigrant rights, and civil rights.

Farmworker Justice has greatly expanded its capacity for communications and outreach in the last several years, and has brought greater awareness of important issues to farmworker communities and to the general public. Farmworker Justice is the leading national advocacy organization for migrant and seasonal farmworkers. Its opinion is highly sought for news stories on farmworkers' occupational and environmental health, as well as U.S. immigration and labor policy. Farmworker Justice staff speak at numerous conferences to disseminate information on these issues, including the American Occupational Health Conference of the American College of Occupational and Environmental Medicine, the Workers Injury Law and Policy Group annual conference, meetings of the National Hispanic Leadership Agenda, and national and regional farmworker health conferences. Farmworker Justice has been quoted in major newspapers such as the *New York Times*, the *Washington Post*, the *Chicago Tribune*, the *Los Angeles Times*, the *Dallas Morning News*, the *Wall Street Journal*, and by the Associated Press, as well as numerous regional newspapers and their websites; and Farmworker Justice President Bruce Goldstein has appeared on CNN News, Fox News, C-Span and National Public Radio.

In sum, disclosure of the requested documents is "likely to contribute significantly to public understanding" of EPA's activities concerning pesticide registrations and labeling requirements, 5 U.S.C. §552(a)(4)(iii), because Earthjustice and Farmworker Justice intend to analyze the information in the released records and to disseminate it to other interested organizations and to the broader public, through one or more of the many communication channels referenced above.

Factor 4: The Contribution to Public Understanding of Government Operations or Activities Will Be Significant.

The public understanding of the November 2017 PPDC Meeting and related meetings, "as compared to the level of public understanding existing prior to disclosure, [will] be enhanced by the disclosure to a significant extent." 40 C.F.R. § 2.107(l)(2)(iv). There is currently disagreement about the comments and conclusions made in the November 2017 PPDC Meeting. For example, reporters noted that "PPDC members seemed to be in broad agreement" that the minimum age provisions of the Worker Protections Standards Revisions were necessary and justified, and U.S. Senator Tom Udall similarly found that "[t]here was consensus from stakeholders [at the Meeting] that the minimum age for pesticide application should be 18." *See, e.g.*, Steve Davies, *EPA's Fiddling with Pesticide Rules Could Imperil Funding*, AgriPulse, Dec. 19, 2017, https://www.agri-pulse.com/articles/10385-epas-fiddling-with-pesticide-rules-could-imperil-funding. In contrast, EPA

claimed that participants at the Meeting expressed an interest in "letting states determine a minimum age for agricultural handlers that meets the needs of the local rural economy." *Id.* The release of the full and accurate transcript, recording, and notes of the November 2017 PPDC Meeting will help put these conflicting characterizations to rest and contribute significantly to the public understanding of government operations. In addition, information about EPA officials' meetings with agriculture industry representatives will also contribute significantly to the public understanding of EPA's proposal to further revise the Worker Protection Standards and Certification of Pesticide Applicators rules.

In addition, the second fee waiver requirement – that the request "is not primarily in the commercial interest of the requester," 40 C.F.R. § 2.107(l)(1) – is also met here. Each of the requesting organizations is a 501(c)(3) nonprofit organization and does not have any "commercial interest that would be furthered by the requested disclosure" of information. 40 C.F.R. § 2.107(l)(3)(i). Indeed, Requesters' sole interest in obtaining the requested information is to broaden public understanding of the statements made at the November 2017 PPDC Meeting and the related meetings of EPA officials.

In sum, this request meets the requirements for a fee waiver. In the event that fees are not waived, please notify and inform us of the basis for your decision.

INSTRUCTIONS FOR RECORD DELIVERY

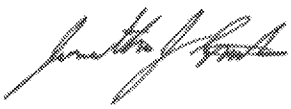
To the extent that the requested records are available in a readily accessible electronic format, we would prefer to receive the documents electronically, either by email or on a CD. If electronic copies are unavailable, we will accept paper copies. Please send records to Jonathan Smith at jjsmith@earthjustice.org or mail them to:

Jonathan J. Smith, Esq.
Earthjustice
48 Wall St., 19th Floor
New York, NY 10005

As FOIA requires, we expect your response within twenty working days of your receipt of this request. In the event that you have any questions concerning the type of materials we are interested in receiving, please contact me by email or by telephone at 212-845-7379.

Thank you for your assistance in this matter.

Sincerely,



Jonathan J. Smith