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September 2, 2021

Submitted via FOIA Online (https://foiaonline.regulations.gov)

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Re: Request Under Freedom of Information Act (Fee Waiver/Limitation Requested)

Dear Freedom of Information Officer:

Ecological Rights Foundation ("EcoRights"), via their public interest counsel at Environmental Advocates, requests the following:

(1) All documents that constitute, identify, document, memorialize, reflect, concern, describe, comment on, analyze, discuss, or otherwise relate to any proposed water quality standards that have been submitted by any of the states listed below to the United States Environmental Protection Agency ("EPA") for approval pursuant to 33 U.S.C. § 1313(c) or 33 U.S.C. § 1313(i) that have not been approved, disapproved, or otherwise finally acted upon by EPA. Please include the most recent correspondence, memoranda, or other documentation indicating the status of EPA's review of the applicable water quality standards. [Note: if any one document or set of documents identify the submitted water quality standards in issue, when the state submitted them and the current status of EPA's approval, disapproval, or other action on such water quality standards, EPA may provide only such document or documents in response to this request].

List of relevant states: Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming.

(2) All documents that constitute, identify, document, memorialize, reflect, concern, describe, comment on, analyze, discuss, or otherwise relate to any EPA issuance of proposed water quality standards for any state listed in paragraph 1 above pursuant to 33 U.S.C. § 1313(b) that have not been promulgated in final form by EPA. Please include the most recent correspondence, memoranda, or other documentation indicating the status

of EPA's issuance or promulgation of the applicable proposed water quality standards. [Note: if any one document or set of documents identify the proposed water quality standards in issue and the current status of EPA's issuance, promulgation, or other consideration of such water quality standards, EPA may provide only such document or documents in response to this request].

FOIA and EPA's accompanying regulations require EPA to issue a written determination to EcoRights within twenty working days that this request was received and logged in by EPA stating which of the requested records will, and which will not, be released and the reason for any denial of any portion of this request. EPA may extend this obligation by ten days by furnishing written notice to the requestor as soon as practicable stating the reasons for such extension and the date by which the office expects to be able to issue a determination. The period may be so extended only when absolutely necessary, only for the period required, and only when one or more of the following unusual circumstances require the extension: (1) there is a need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (2) there is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or (3) there is a need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request.

We request that to the extent that EPA can do so, EcoRights be furnished with electronic copies of the above documents in lieu of paper copies (to minimize the expense and burden of copying). 5 U.S.C. § 552(a)(3)(B) (note, as amended in 1996 FOIA mandates that "an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.").

For purposes of this request, the term "documents" means all written, typewritten, drawn or printed material or record of any type or description and all information kept or recorded on magnetic or electronic media, including, without limitation, correspondence, letters, agreements, contracts, memoranda of agreement or understanding, electronic mail (including both messages sent and received from government personnel), telegrams, inter- and intra-office communications, forms, reports, studies, working papers, handwritten or other notes, phone records, logs, diaries, minutes, spreadsheets, computation sheets, data sheets, transcripts, drawings, sketches, plans, leases, invoices, index cards, checks, check registers, maps, charts, graphs, bulletins, circulars, pamphlets, notices, summaries, books, photographs, sound recordings, videotapes, rules, photocopied or computer-related materials, 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 of them, and all forms of written or recorded matter to which EPA has access or of which EPA has any knowledge.

For purposes of this request, the term "related to" means comprising, constituting, containing, evidencing, setting forth, summarizing, alluding to, responding to, commenting upon, discussing, supporting, refuting, showing, disclosing, explaining, mentioning, analyzing, recording, reflecting upon, or characterizing, either directly or indirectly, in whole or in part.

FOIA requires that an agency disclose documents to any person except where the document falls under a specifically enumerated exemption. 5 U.S.C. § 552. "[T]hese limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act"; "[c]onsistent with the Act's goal of broad disclosure, these exemptions have been consistently given a narrow compass." *Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 7-8 (2001) (internal citations omitted). The courts have emphasized the narrow scope of these exemptions and "the strong policy of the FOIA that the public is entitled to know what its government is doing and why." *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 868 (D.C. Cir. 1980). Further, under the FOIA Improvement Act, 5 U.S.C § 552(a)(8)(A) now provides that (1) an agency shall withhold information only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b) or disclosure is prohibited by law; (2) the agency shall consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and (3) the agency shall take reasonable steps necessary to segregate and release nonexempt information.

Thus, the government has a duty in preparing responses to EcoRights' FOIA request not to withhold documents unless foreseeable harm exists, to consider partial disclosure, and to take reasonable steps to segregate nonexempt information. Exemptions are read narrowly and the government bears the burden of proving exemptions apply. 5 U.S.C. § 552(a)(4)(b); *see Milner v. Dep't of the Navy,* 562 U.S. 562, 563 (U.S. 2011). Agencies "should not withhold information simply because [they] may do so legally. . . For every request, for every record reviewed, agencies should be asking 'Can this be released?' rather than asking 'How can this be withheld?'"[1] *See also Mobil Oil Corp. v. U.S. E.P.A.,* 879 F.2d 698, 700 (9th Cir. 1989) ("The exemptions are permissive, and an agency may voluntarily release information that it would be permitted to withhold under the FOIA exemptions.")

We request that EPA provide electronic copies of its response to this request – as well as any responsive documents that may be transmitted via e-mail – to Brian Orion and Christopher Sproul at the following e-mail addresses:

Brian Orion: borion@enviroadvocates.com
Christopher Sproul: csproul@enviroadvocates.com

Please send any documents that must be sent via regular mail to the following address:

Christopher Sproul
Environmental Advocates
5135 Anza Street
San Francisco, CA 94121

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[1] U.S. Department of Justice – Office of Information Policy, Creating a New Era of Open Government; *see also* Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act (74 Fed. Reg. 4683); Attorney General Holder's Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 51879 (Oct. 8, 2009).

As indicated in the attached fee waiver, EcoRights requests that EPA waive any fees associated with responding to this request. If EPA declines this request, EcoRights further requests an estimate of the charges to respond to this request in full. In the event EPA denies our fee waiver request, EcoRights will provide EPA with further instructions concerning how much it would then be willing to pay for a response to this request pending what would then be a likely appeal of EPA's denial of our fee waiver.

Please contact me at borion@enviroadvocates.com to further discuss your response to this request. Thank you for your prompt attention to this matter.

Sincerely,

/s/ Brian Orion
Brian Orion
Environmental Advocates