## Green, LindaE

**From:** Hugh Macmillan <hmacmillan@fwwatch.org>
**Sent:** Monday, November 16, 2015 5:43 PM
**To:** FOIA HQ
**Cc:** Hugh MacMillan
**Subject:** foia request spa HF study
**Attachments:** EPA HF study FOIA full MacMillan.pdf

Hello,

Please confirm receipt of this FOIA request and do not hesitate to contact me at (206) 939-9408 if I can help in clarifying my request in any way.

Thank you,
Hugh MacMillan

November 16, 2015

National Freedom of Information Act Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667

[Also submitted via email at **hq.foia@epa.gov]**

Dear FOIA Officer:

This request is regarding the U.S. Environmental Protection Agency's final draft assessment of the potential impacts on drinking water resources from the hydraulic fracturing and related activities.

Specifically, pursuant to the Freedom of Information Act, 5 U.S.C. § 552, Food & Water Watch (F&WW) respectfully requests the below information:

1. Any and all records of correspondence, including electronic attachments, that were: (i) between or involving any one or more of the following individuals: Ann Dunkin; Carol Rushin; Cathy Milbourn; Julia P. Valentine; George Hull; Liz Purchia; Roxanne Smith and Thomas Reynolds; (ii) regarding the news release dated June 4, 2015 and entitled "EPA Releases Draft Assessment on the Potential Impacts to Drinking Water Resources from Hydraulic Fracturing Activities"; and (iii) occurring within the time period of April 1, 2015 to July 1, 2015. One or more of the following search terms may be useful for identifying relevant correspondence: "release", "assessment", "HF study", "widespread", "systemic", and "evidence of widespread".

2. Any and all records of correspondence, including electronic attachments, that: (i) were during the time period April 1, 2014 to June 6, 2015; (ii) were in regard to the text of the final draft assessment; (iii) either contain the word "widespread" in text or in an attachment or in reply to correspondence that contains that word in text or in an attachment; and (iv) involve, as sender or receiver, at least one of the following U.S. EPA officials: Jeff Frithsen; Tom Burke; Jeanne Briskin; Cynthia Sonich-Mullin; Thomas Reynolds; and Lisa Biddle.

3. Any and all records of correspondence over the time period November 1, 2014 to June 6, 2015 that: (i) is initiated by or otherwise involves one or more of the following U.S. EPA officials: E. Ramona Travato; Lisa Matthews; Kevin Teichman; Jeff Frithsen; Tom Burke; Jeanne Briskin; Cynthia Sonich-Mullin; Thomas Reynolds; and Lisa Biddle; and that (ii) either (a) contains any of the following names: "Dimock," "Dimmock", "Pavillion", "Pavilion", "Parker County", "Kemble", "Fenton", "Lipsky", "Gulla", or "Craig Stevens" or (b) is in reply to correspondence that contains one or more of these letter strings.

4. Copies of audio or video data recording of the EPA SAB panel meeting held on October 29 at the Washington Plaza Hotel. Specifically, we seek copies of audio and or video data recording from 3 p.m. to 5 p.m.

5. Any and all records of correspondence over the time period October 27, 2015 to November 15, 2015 by EPA SAB, or by EPA SAB staffing employees of EPA, that is in regard to or stems from an October 28th incident in which the van used by an EPA employee or contractor in charge of audio/visual recording/streaming of the EPA SAB panel meeting that day at the Washington Plaza hotel on Thomas Circle, in Washington, D.C., was broken into while parked at the Plaza's off-site valet parking lot. The name of the EPA employee or contractor in charge of audio/visual recording/streaming the panel meeting is not known, but should be easily determined by the EPA SAB and EPA department handling technical meeting production.

Understanding that some of the above five distinct requests encompass different magnitudes in scale for the respective volumes of relevant documents, and therefore require different lengths of time to fulfill, we respectfully ask that the four distinct requests be segregated and fulfilled separately.

Do not hesitate to call me at 206-939-9408 if I can be of further assistance in clarifying these requests.

The release of records under each of the requests, and the collective requests, will help resolve questions held by the public, as well as held by the EPA Scientific Advisory Board panel of peer-reviewers of the assessment, in regard to where scientific considerations ended and policy considerations began in the summary of the final draft assessment's findings.

In particular, release of the above information will shed light on considerations that led the agency to place emphasis on national scale impacts (i.e., vis a vis the phrase "widespread, systemic") relative to the number of wells drilled and fracked, as opposed to on the data gaps, uncertainties and other factors that hindered quantifying the frequency and severity of impacts, which are known to be local and in some cases severe.

As peer-review panelists noted at the EPA SAB meetings October 28-30th on the assessment, these data gaps and uncertainties stem in part from the lack of monitoring the aftermath of spills, lack of monitoring of hydraulic fracturing activities, lack of toxicological information about chemicals involved, lack of information on well cement integrity over time, lack of monitoring of ground water quality, and the inaccessibility of sealed court settlements from past cases of contamination complaints.

At the EPA SAB meetings the panelists also emphasized the importance of explicitly summarizing what is known in regard to high-profile cases of contamination in Dimock, Pennslvania, Pavillion, Wyoming and Parker County, Texas.

F&WW is a non-profit consumer advocacy organization, and requests a fee waiver on the following basis:

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government. A request for access to records for their informational content alone does not satisfy this factor: The above request specifically identifies records of communications concerning the undertaking of the assessment. As such, the request specifically concerns identifiable operations or activities of the government.
2. For the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request: The requested communications will allow for public understanding of where scientific considerations ended and policy considerations began in the summary of the final draft assessment findings. Public understanding of the EPA's assessment of the potential impacts on drinking water resources from hydraulic fracturing activities relies direction upon the EPA being candid on where scientific considerations ended and political considerations began.[1]
3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. One's status as a representative of the news media alone is not enough: Again, public understanding of the EPA's assessment of the potential impacts on drinking water resources from hydraulic fracturing activities relies direction upon the EPA being candid on where scientific considerations ended and political considerations began. F&WW staff has the ability to analyze the information requested and intends to disseminate its analysis broadly to assist in improving public understanding of the EPA's assessment. F&WW will disseminate the results of its independent analysis through its established communication channels, including on-line content, fact sheets, issue briefs and reports, all of which are made freely available to the public. A number of courts have found that requesters' statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations to public interest groups, government agencies, and the general public is sufficient to entitle an organization to a fee waiver.[2]
4. The disclosure must contribute "significantly" to public understanding of government operations or activities: At the U.S. EPA Scientific Advisory Board meetings held in Washington, DC from October 28th to 30th, the assembled panel reviewing the final draft assessment expressed near-unanimous concern over the

---

[1] Thomas McGarity and Wendy Wagner. 2008. "Bending Science: How Special Interests Corrupt Public Health Research." Harvard University Press: Cambridge, Mass. at 269.

[2] *See S. Utah Wilderness Alliance v. U.S. BLM*, 402 F. Supp. 2d 82, 88 (D.D.C. 2005) (quoting *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1041 (D. Idaho 2004) ("courts' findings that organizations' 'statements of intent to disseminate requested information through newsletters, popular news outlets, and

[2] *See S. Utah Wilderness Alliance v. U.S. BLM*, 402 F. Supp. 2d 82, 88 (D.D.C. 2005) (quoting *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1041 (D. Idaho 2004) ("courts' findings that organizations' 'statements of intent to disseminate requested information through newsletters, popular news outlets, and
presentations . . . [are] sufficient to entitle [the] organization to a fee waiver.'")). *See also Judicial Watch, Inc., v. Rossotti*, 326 F.3d at 1314.

agency's summary of findings. Specifically, as concerns, the panelists cited the lack of clarity over the meaning of the terms "widespread" and "systemic", the emphasis on national scale versus local scale impacts, insufficient emphasis on data limitations and uncertainties that hindered conclusions about the frequency and severity of impacts, and the exclusion of the high-profile cases in Dimock, Pavillion and Parker County in the assessment.

5. The extent to which disclosure will serve the requester's commercial interest, if any: Food & Water Watch has no commercial interest in obtaining the agency records that it is requesting.
6. The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest: There is no commercial interest, and the public interest is significant.

If this FOIA request is denied in whole or in part, a detailed justification for withholding the records is expected. Food & Water Watch also asks that any non-exempt segregable portions of the requested documents be disclosed.

Thank you for your prompt attention to this matter. Please contact Hugh MacMillan at 206-939-9408 or hmacmillan@fwwatch.org with any questions regarding this request for information.

Sincerely,

Hugh MacMillan
Senior Researcher
Food & Water Watch