



July 10, 2019

VIA FOIA ONLINE

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

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, 40 C.F.R. Part 2, American Oversight makes the following request for records.

In April 2019, President Trump issued Executive Order (EO) 13868 in order to expedite the certification process of energy infrastructure projects by granting the federal government wide-reaching authority to control and approve gas and oil pipelines—an action that will weaken the power of states to block pollutant projects under Section 401 of the Clean Water Act (CWA).¹ Pursuant to EO 13868, the U.S. Environmental Protection Agency (EPA) issued updated guidance concerning the implementation of CWA Section 401.²

American Oversight seeks records to shed light on whether and to what extent industry interests are influencing new EPA guidance governing the CWA.

Requested Records

American Oversight requests that EPA produce the following records within twenty business days:

1. All email communications (including email messages, complete email chains, email attachments, and calendar invitations) from October 1, 2018, through the

¹ THE WHITE HOUSE, Exec. Order 13868, *Executive Order on Promoting Energy Infrastructure and Economic Growth*, Apr. 10, 2019.

² U.S. ENVTL. PROT. AGENCY, *Clean Water Act Section 401 Guidance for Federal Agencies, States and Authorized Tribes*, June 7, 2019. https://www.epa.gov/sites/production/files/2019-06/documents/cwa_section_401_guidance.pdf.



date the search is conducted, sent by the EPA officials listed below to any employee or representative of the following entities:

- i. Interstate Natural Gas Association of America, including anyone with an email address ending in @ingaa.org;
- ii. American Gas Association, including anyone with an email address ending in @aga.org;
- iii. Alliance Resource Partners and Alliance Coal, including anyone with an email address ending in @arlp.com;
- iv. Energy Transfer Equity, including anyone with an email address ending in @energytransfer.com;
- v. The American Petroleum Institute, including anyone with an email address ending in @api.org;
- vi. Murray Energy Corp., including anyone with an email address ending in @coalsource.com;
- vii. Enbridge, Inc., including anyone with an email address ending in @enbridge.com;
- viii. ProPetro, including anyone with an email address ending in @propetroservices.com;
- ix. TransCanada, including anyone with an email address ending in @transcanada.com;
- x. Exxon Mobil, including anyone with an email address ending in @exxonmobil.com;
- xi. Chevron Corp., including anyone with an email address ending in @chevron.com;
- xii. ConocoPhillips, including anyone with an email address ending in @conocophillips.com;
- xiii. Occidental Petroleum, including anyone with an email address ending in @oxy.com;
- xiv. Concho Resources Inc., including anyone with an email address ending in @concho.com;
- xv. Continental Resources Inc., including anyone with an email address ending in @contres.com or @clr.com;
- xvi. Pioneer Natural Resources Company, including anyone with an email address ending in @pxd.com;
- xvii. Natural Resource Partners, including anyone with an email address ending in @nrplp.com;
- xviii. Plains All American Pipeline, including anyone with an email address ending in @plainsallamerican.com;
- xix. USA Compression Partners L.P., including anyone with an email address ending in @usacompression.com;
- xx. BreitBurn Energy Partners L.P., including anyone with an email address ending in @mavresources.com or @breitburn.com;
- xxi. Cobalt International Energy Inc., including anyone with an email address ending in @cobaltintl.com;

- xxii. Enterprise Products Partners L.P, including anyone with an email address ending in @enterpriseproducts.com;
- xxiii. EOG Resources Inc., including anyone with an email address ending in @eogresources.com;
- xxiv. Atlas Energy Group LLC, including anyone with an email address ending in @atlasenergy.com;
- xxv. Legacy Reserves LP, including anyone with an email address ending in @legacyreserves.com;
- xxvi. Western Gas Partners LP, including anyone with an email address ending in @westernmidstream.com;
- xxvii. British Petroleum, including anyone with an email address ending in @bp.com; or
- xxviii. Antero Resources Corporation, including anyone with an email address ending in @anteroresources.com.

2. To the extent not responsive to Part 1 of this request, all email communications (including email messages, complete email chains, email attachments, and calendar invitations) from October 1, 2018, through the date the search is conducted, sent by any of the EPA officials listed below to any email address ending in .com, .net, .org, .edu, or .co, including the following terms:

- i. “Clean Water Act”
- ii. “CWA”
- iii. “National Environmental Policy Act”
- iv. “NEPA”
- v. “Section 401”
- vi. “13868”

For Parts 1 and 2 of this request, American Oversight requests that EPA produce the responsive records of the following officials:

- i. The Office of the Administrator:
 - a) Administrator Andrew Wheeler and anyone acting on his behalf such as a chief or deputy chief of staff, scheduler, assistant, or advisor;
 - b) Henry Darwin, Acting Deputy Administrator; and
 - c) Helena Wooden-Aguilar, Acting Deputy Chief of Staff.
- ii. The Office of Enforcement and Compliance Assurance:
 - d) Assistant Administrator Susan Bodine and anyone acting on her behalf, such as a chief or deputy chief of staff, scheduler, assistant, or advisor;
 - e) Lawrence Starfield, Principal Deputy Assistant Administrator; and
 - f) Patrick Traylor, Deputy Assistant Administrator.
- iii. The Office of Water:

- g) Assistant Administrator Dave Ross and anyone acting on his behalf, such as a chief or deputy chief of staff, scheduler, assistant, or advisor;
 - h) Dennis Lee Forsgren, Jr., Deputy Assistant Administrator;
 - i) Anna Wildeman, Principal Deputy Assistant Administrator; and
 - j) Benita Best-Wong., Principal Deputy Assistant Administrator.
- iv. The Office of Congressional and Intergovernmental Relations:
- k) Acting Associate Administrator Joseph Brazauskas and anyone acting on his behalf such as a chief or deputy chief of staff, scheduler, assistant, or advisor;
 - l) Robin H. Richardson, Principal Deputy Associate Administrator;
 - m) Travis Voyles, Director of Oversight; and
 - n) Britt Carter, Director of Office of Intergovernmental Relations.
3. All final legal analyses of the potential or actual impact of EO 13868 and new EPA guidance governing CWA Section 401 on state laws and regulations concerning the implementation and administration of the CWA and other federal environmental statutes and regulatory programs.

American Oversight believes that EPA is best positioned to determine where responsive records for Part 3 of this request are likely to reside, including which file repositories and/or custodians are likely to contain, possess, or be able to identify responsive records.

Please provide all responsive records from October 1, 2018, through the date the search is conducted.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government."³ The public has a significant interest in matters related to energy infrastructure projects, including concerns regarding the environmental impact of oil and gas pipelines that may put the safety and

³ 5 U.S.C. § 552(a)(4)(A)(iii).

health of Americans at risk.⁴ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including what outside interests may be influencing or otherwise involved in regulations governing the gas and oil pipelines certification process. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes.⁵ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁶

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.⁷ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;⁸ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;⁹ posting

⁴ AM. PUB. HEALTH ASS'N, *The Environmental Protection Agency in the Early Trump Administration: Prelude to Regulatory Capture*, Feb. 5, 2018, <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2018.304360>

⁵ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁶ American Oversight currently has approximately 12,300 page likes on Facebook and 54,400 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited July 9, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited July 9, 2019).

⁷ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

⁸ *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

⁹ See generally *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall*

records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹⁰ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹¹ posting records and analysis regarding the Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.¹²

Accordingly, American Oversight qualifies for a fee waiver.

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.¹³ It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files

Investigation Report: No Plans, No Funding, No Timeline, No Wall, AMERICAN OVERSIGHT, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

¹⁰ *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>.

¹¹ *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>.

¹² *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

¹³ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.¹⁴

- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,¹⁵ and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or

¹⁴ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

¹⁵ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Hart Wood at foia@americanoversight.org or 202.873.1743. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers
Executive Director
American Oversight