



May 5, 2020

VIA ONLINE PORTAL

National FOIA Office
Office of the General Counsel
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 October 2019, the Government Accountability Office (GAO) published a report titled, *SUPERFUND: EPA Should Take Additional Actions to Manage Risks from Climate Change*.¹ Within that report, the GAO identified specific Superfund sites that may be at risk from flooding and wildfires related to climate change. The report makes four recommendations, but the EPA only concurred with one.

American Oversight seeks records to shed light on whether and to what extent EPA is preparing for climate change-related risks at Superfund sites.

Requested Records

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

¹U.S. Gov't Accountability Office, GAO-20-73, *SUPERFUND: EPA Should Take Additional Actions to Manage Risks from Climate Change* (Oct. 2019), available at <https://www.gao.gov/assets/710/702158.pdf>.



1. Records sufficient to identify any site-specific efforts to determine climate change-related risks, including, but not limited to, flooding and sea level rise, at any of the Superfund sites listed below. These documents may include climate change risk assessments, surveys, investigations, or other relevant documents.

2. Records sufficient to identify any site-specific efforts to mitigate climate change-related risks (including, but not limited to construction, guidance, or directives), at any of the Superfund sites listed below.

Site EPA ID	Superfund Name
1. LAD058475419	Delta Shipyard
2. PAD046557096	Metal Bank
3. NCN000407480	Horton Iron and Metal
4. MAD980732317	Groveland Wells
5. NJD063160667	Global Sanitary Landfill
6. PASFN0305521	Lower Darby Creek Area
7. FLD032544587	Pepper Steel & Alloys, Inc.
8. MAD980731335	New Bedford
9. NJD079303020	Lcp Chemicals Inc.
10. MDD985366756	Dwyer Property Ground Water Plume
11. TXD980514996	Highlands Acid Pit
12. MOD981507585	Newton County Mine Tailings
13. NJD980761373	De Rewal Chemical Co.
14. MAD001041987	Baird & Mcguire
15. GAN000407449	Peach Orchard Rd Pce Groundwater Plume Site
16. WAD980836662	Centralia Municipal Landfill
17. MOD980633010	Ellisville Site
18. PAD980926976	North Penn - Area 6
19. OHD980610042	Reilly Tar & Chemical Corp. (Dover Plant)
20. NJD002173276	American Cyanamid Co
21. VAD007972482	L.A. Clarke & Son
22. NJD057143984	Curtis Specialty Papers, Inc
23. RID093212439	Landfill & Resource Recovery, Inc. (L&Rr)
24. ARD008052508	Popile, Inc.
25. NEN000704272	Old Hwy 275 And N 288th Street
26. TND007018799	American Creosote Works, Inc. (Jackson Plant)
27. MND980904072	Long Prairie Ground Water Contamination
28. MOD980968341	Valley Park Tce
29. TXD086278058	Falcon Refinery
30. ALD983166299	Triana/Tennessee River
31. MOD980633176	St. Louis Airport/Hazelwood Interim Storage/Futura Coatings Co.
32. LAD008473142	Marion Pressure Treating
33. FLD000824896	Reeves Southeastern Galvanizing Corp.
34. MAD062166335	Nuclear Metals, Inc.

- 35. TXD980867279 Odessa Chromium #1
- 36. MND982425209 Baytown Township Ground Water Plume
- 37. NHD001091453 New Hampshire Plating Co.

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.”² The public has a significant interest in the EPA’s Superfund guidance and risks to specific Superfund sites, especially because these places contain pollutants that endanger lives. Records with the potential to shed light on this issue would contribute significantly to public understanding of operations of the federal government, including how well the EPA is preparing for climate change-related risks. 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.³ 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.⁴

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses

² 5 U.S.C. § 552(a)(4)(A)(iii).

³ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁴ American Oversight currently has approximately 15,400 page likes on Facebook and 102,000 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 23, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Apr. 23, 2020).

posted to its website.⁵ 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;⁶ 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;⁷ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;⁸ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;⁹ and 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.¹⁰

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:

⁵ *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

⁶ *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>.

⁷ *See generally Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; *see, e.g., Border Wall 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>.

⁸ *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>.

⁹ *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>.

¹⁰ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions.
- 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.¹¹ 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 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.¹²
- 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,¹³ 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

¹¹ 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).

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

¹³ 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>.

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 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". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Austin R. Evers
Executive Director
American Oversight