

*** Association of Irrigated Residents * Center on Race, Poverty & the Environment * Environmental Defense * Environmental Integrity Project * Natural Resources Defense Council * Sierra Club ***

May 5, 2003

Via Electronic Mail and First Class Mail

Freedom of Information Officer
Records, FOIA, and Privacy Branch
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U.S. Environmental Protection Agency
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Regional Freedom of Information Officer
U.S. Environmental Protection Agency, Region 4
Sam Nunn Federal Center
61 Forsyth Street
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Re: FREEDOM OF INFORMATION ACT REQUEST

Dear Freedom of Information Act Officers:

On behalf of the coalition of local and national public health and environmental advocates listed above, (the “Requesting Groups”), we are writing to request the records described below pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the pertinent Environmental Protection Agency (“EPA”) regulations, 40 C.F.R. § 2.100, *et seq.*

I. Description of Records Sought

Please produce all records¹ identifying, mentioning, discussing, describing, reporting, comprising, listing, or analyzing the following:

- a. all “safe harbor” agreements or other type of agreements relating to the enforcement of Clean Air Act (“CAA”) and/or Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) requirements at concentrated animal feeding operations (“CAFOs”), as described in a June 11, 2002 memorandum from John Thorne and Richard Schwartz to David Nielsen and Sally Shaver at EPA, and as referenced in an April 7, 2003 letter from the State and Territorial Air Pollution Program Administrators to Christine Whitman.
- b. all air emissions monitoring information from any part of the CAFO industry, including but not limited to any records submitted to EPA by a CAFO in response to a section 114 information request or pursuant to a settlement agreement or order that requires emissions monitoring, including but not limited to any information regarding the number of facilities monitored, the chemicals monitored, the types and amount of data collected, the data itself, and any recommendations or conclusions on better facility management practices and pollution control technologies.
- c. all EPA headquarters or regional policy, guidance, interpretation or other determination or decision of any kind whatsoever defining or interpreting air emissions from any source in the CAFO industry as “fugitive” emissions, including but not limited to emissions from animal confinement barns, coops, and animal waste storage lagoons and distribution systems.
- d. all requests for information issued pursuant to section 114 of the Clean Air Act by EPA to any CAFO, including but not limited to Buckeye Egg Farms, Seaboard

¹ The term “records” is used herein to mean anything denoted by the use of that word or its singular form in the text of FOIA. In particular, the term includes, but is not limited to, all writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored) in EPA’s possession, including, but not limited to, correspondence, minutes of meetings, memoranda, notes, e-mails, notices, telephonic facsimiles, charts, tables, presentations, orders and filings. “Records” shall not include e-mails stored on back-up tapes or other similar long-term permanent storage devices in a central location, but shall include e-mails – stored either electronically or in paper form – within the immediate control of any EPA employees possessing information responsive to this request.

Farms and Premium Standard Farms, and all EPA settlement documents or orders that require a CAFO to monitor its emissions.

Without limitation, the records requested include records relating to the topics described above at any stage of development, whether proposed, draft, pending, interim final or otherwise. Without limitation, the records requested above include any and all records of any discussions, meetings, correspondence or communications of any kind whatsoever on these topics between EPA and the individuals and entities listed below², as well as between EPA and any other individual, attorney, lobbyist, consultant, corporation or other business entity or trade association involved with dairy, egg, poultry, turkey, beef or swine production businesses or enterprises. Without limitation, the records requested also include any and all records of any discussions, meetings, correspondence or communications of any kind whatsoever on these topics within EPA or between EPA and any other federal, state or local agency.

Please produce all of the records described above that were prepared, revised, transmitted dated or received at any time within the last three years prior to the date of this FOIA request, e.g. dating back to May 5, 2000.

II. Request for a Fee Waiver

The Requesting Groups request that the EPA waive the fee that it would otherwise charge for search and production of the records described in Section I, above. FOIA dictates that requested records be provided without charge “if disclosure of the information is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily for the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); see also 40 C.F.R. § 2.107(1)(1). The requested disclosure would meet both of these requirements.

A. First Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii). Specifically, the requested disclosure would satisfy the four elements identified at 40 C.F.R. § 2.107(1)(2).

The topics of this FOIA request relate to a matter of grave public concern. Evidence continues to mount correlating CAFO air emissions with detrimental public health and environmental impacts. Peer-reviewed studies have shown increased headaches, sore throats,

² John Thorne, Richard Schwartz, Capitolink, Crowell & Moring, American Farm Bureau, Cagle’s, Inc., Cargill, Inc., Christensen Farms, ConAgra Foods, Foster Farms, Gold Kist, Inc., Goldsboro Hog Farm, The Hanor Company, Iowa Select Farms, National Chicken Council, National Milk Producers Federation, National Pork Producers Council, Pipestone System, Perdue Farms, Inc., Pilgrim’s Pride Corp., Premium Standard Farms, Prestage Farms, Sanderson Farms, Seaboard Farms, Smithfield Foods, Tyson Foods, Inc., United Egg Producers, US Poultry & Egg Assoc., and Wayne Farms.

excessive coughing, diarrhea, burning eyes, and reduced quality of life in residents near a hog CAFO in North Carolina resulting from air emissions, and increased eye and upper respiratory symptoms in residents within two miles of a large hog operation in Iowa. Immense nuisance verdicts were recently rendered by courts in Iowa against the Iowa Select CAFO and in Ohio against the Buckeye Egg CAFO in large part due to noxious air emissions. Serious questions have also been raised in the San Joaquin Valley – an area heavily polluted by agricultural operations – with respect to CAFOs’ contribution to total air pollution and the corresponding health effects associated with smog and particulate matter pollution.

The records described in Section I, above, would provide insight into agency activities that would exempt, or otherwise alter the classification of air emissions from CAFOs. These records would also provide the public with knowledge of the extent of the problem, investigations of the problem, and the CAFO industry’s ability to comply with the Clean Air Act and CERCLA.

B. Second Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request in that Requesting Groups do not have “a commercial interest that would be furthered by the requested disclosure.” 40 C.F.R. § 2.107(1)(1). The Requesting Groups are not-for-profit organizations and, as such, have no commercial interest. See id. § 2.107(1)(3)(i).

III. Willingness to Pay Fees Under Protest

Please provide the records described above irrespective of the status and outcome of your evaluation of the Requesting Groups’ fee category assertion and fee waiver request. In order to prevent delay in EPA’s provision of the requested records, the Requesting Groups state that they will, if necessary and under protest, pay fees in accordance with 40 C.F.R. § 2.107(c)(iv). Such payment will not constitute any waiver of Requesting Groups’ right to seek administrative or judicial review of any denial of their fee waiver request and/or rejection of their fee category assertion.

IV. Conclusion

We ask that EPA strictly comply with all relevant deadlines and other obligations set forth in FOIA and the agency’s regulations. See e.g., C.F.R. § 2.104(a)-(d) and (f)(i). Please produce the records above by sending them care of Pat Gallagher at the address listed below. Please produce them on a rolling basis within the statutory time limits; at no point should EPA’s search for – or deliberation concerning – certain records delay the production of others that the agency has already retrieved and elected to produce.

In case EPA believes that some of the records requested herein may already be publicly available, we will be happy to discuss these instances with EPA officials in an effort to narrow the scope of this request. Please contact Pat Gallagher at the number listed below with any questions. Thank you for your prompt attention to this matter.

Sincerely,

Brent Newell
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cc: J.P Suarez, U.S. EPA Office of Enforcement and Compliance Assurance
Jeffrey Holmstead, U.S. EPA, Assistant Administrator
Steve Page, Bill Harnett & Sally Shaver, U.S. EPA Office of Air and Radiation
Jean Mari Peltier, U.S. EPA Office of the Administrator
Walker Smith, U.S. EPA Office of Enforcement and Compliance Assurance
Lisa Friedman, U.S. EPA Office of the General Counsel
Honorable James M. Inhofe, United States Senate
Honorable James Jeffords, United States Senate
Congressman W. J. Tauzin, House of Representatives
Congressman John Dingell, House of Representatives