

**Congress of the United States**  
**Washington, DC 20515**

April 29, 2013

The Honorable Bob Perciasepe  
Acting Administrator  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Acting Administrator Perciasepe,

Throughout the current Administration, your agency has regularly brokered settlement agreements to carry out specific regulatory activities after being sued by environmental groups. "Sue and Settle" is a hallmark of the Obama Administration's environmental policymaking across agencies, with EPA being the most egregious example. These exclusively negotiated deals circumvent transparency, exclude impacted parties and have far reaching economic consequences.

Many of the nation's longstanding environmental laws include the principle of cooperative federalism, where the Federal Government sets the standards and the States determine how to meet those standards and regulate within their borders. While we remain extremely concerned about the way this Administration has abused its statutory discretion under the nation's environmental laws, the process of cooperative federalism historically worked well; regulations, when found necessary, that are tailored by State and local governments are more effective and less burdensome than one-sized-fits-all federal edicts regularly issued by your Agency. Effective rulemaking through cooperative federalism takes time and requires the federal government to work with States so resource planning can be done efficiently and regulations can be implemented as effectively as possible.

Over the past several years, however, upon being sued by environmental groups, the Obama Administration's EPA regularly entered into Consent Decrees without ever notifying the affected States, or for that matter, inviting them to participate in the negotiations or decision making process. The result of these Consent Decrees: sweeping new commitments by the Agency to execute certain policies in new ways that, over the past four years, created regulations of excessive cost and burden. Leaving States in the dark, along with the threat of hastily constructed new regulatory regimes, creates circumstances in which the diligent work being done by States to implement existing regulations in the least burdensome, most effective way possible is rendered useless. This practice is particularly alarming to us, and it does not even speak to the financial impact these regulations have had on the private sector.

More alarming is the potential that EPA actively coordinated the lawsuits filed by environmental groups as a means to pursue the Administration's continued War on Fossil Fuels.

A number of state Attorneys General (AGs), who share our concerns and are rightfully troubled by the EPA's actions to undermine their states' authority, filed a FOIA request on August 10, 2012 requesting that EPA disclose to them, among other things, "all documents...that discuss or in any way relate to: (a) any consideration, proposal or discussions with any Interested

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Organizations...concerning” the scope, application, or course of action being taken by EPA to implement the laws under its purview, including the Clean Air Act and Clean Water Act. On August 21, 2012, the EPA refused to grant the AGs a requested fee waiver to carry out the request. On September 21, 2012, the AGs appealed the decision to deny a fee waiver. On October 1, 2012, the EPA responded to the AGs’ original FOIA request, stating that the request could not be fulfilled because it was too broad and did not adequately describe the records being sought. The September 21, 2012, fee waiver appeal was closed on October 23, 2012, by the EPA because the AGs did “not currently have a proper request pending before the Agency.”

Despite frustrating attempts to modify the original FOIA request, the AGs filed a new request on February 6, 2013, specifying that their request for released documents would be limited to communications between EPA and Interested Organizations regarding any Regional Haze State Implementation Plan (SIP). In this request, the AGs again requested a fee waiver from EPA. In a February 22, 2013 letter, EPA denied the AGs a fee waiver, and terminated work on the request, because according to the Agency, the AGs “have not expressed a specific intent to disseminate the information to the general public.”

On April 11, 2013, during the Senate Environment and Public Works Committee’s Confirmation Hearing on the Nomination of Gina McCarthy to be EPA Administrator, Senator Inhofe asked Ms. McCarthy if she would provide him with the information requested by the AGs if he requested it. Ms. McCarthy responded by saying that she would “certainly...take that back to the agency and respond as quickly as I can to your request.”

Accordingly, we are writing to formally request that you make available to us and our staff the information requested by the AGs in their August 10, 2012 request, as detailed in Attachment A to this letter. It is important for Congress to understand the relationship between EPA and nongovernmental organizations, particularly as it relates to the coordination and influence over public policymaking. Moreover, these relationships have the potential to push states and other stakeholders out of the process. Accordingly, releasing the correspondence between the EPA and these entities is in the public interest. The American people deserve to understand the process EPA follows when crafting the environmental policies under which they must live. We appreciate your prompt attention to this matter, and request that you make a commitment to produce responsive documents no later May 7, 2013. If you have any questions regarding this request, please contact Kristina Moore with the Environment and Public Works Committee or Tyler Grimm with the Committee on Oversight and Government Reform.

Sincerely,



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Senator David Vitter  
Ranking Member  
Environment and Public Works Committee



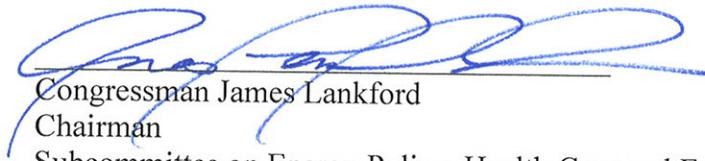
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Senator James M. Inhofe  
Ranking Member  
Subcommittee on Oversight  
Environment and Public Works Committee

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Congressman James Lankford

Chairman

Subcommittee on Energy Policy, Health Care and Entitlements

Oversight and Government Reform Committee

ATTACHMENT A

We respectfully request any and all documents (including any and all written or electronic correspondence, audiotapes, electronic records, videotapes, photographs, telephone messages, voice mail messages, e-mails, facsimiles, daily agendas and calendars, information about meetings and/or discussions, whether in-person or over the telephone, agendas, minutes and a list of participants for those meetings and/or discussions, and transcripts and notes of any such meetings and/or discussions) from January 1, 2009 to the date of this letter that discuss or in any way relates to:

- (a) Any consideration, proposal or discussions with any Interested Organization (as that term is defined below), or any other non-governmental organization, including citizen organizations, whose purpose or interest may include environmental or natural resource advocacy and policy ("**Other organizations**"), concerning:
  - i. The scope and application of the EPA Administrator's non-discretionary duty to take certain actions under the Clean Air Act ("**CAA**"), 42 U.S.C. 7604(a)(2); the Clean Water Act ("**CWA**"), 33 U.S.C. 1365; or the Resource Conservation and Recovery Act ("**RCRA**"), 42 U.S.C. 6972;
  - ii. The course of action to take with respect to any state implementation plan ("**SIP**") required to be submitted to the U.S. Environmental Protection Agency ("**EPA**") under the CAA for the State;
  - iii. The course of action to be taken concerning a State's administration of any provision of either the CAA, CWA or RCRA; or
  - iv. The course of action to be taken with respect to any administrative or judicial order, decree or waiver entered, or proposed to be entered, under the CAA, CWA or RCRA concerning the State (the "**Subject**").
  
- (b) Copies of any and all documents (including any and all written or electronic correspondence, audiotapes, electronic records, videotapes, photographs, telephone messages, voice mail messages, e-mails, facsimiles, daily agendas and calendars, information about meetings and/or discussions, whether in-person or over the telephone, agendas, minutes and a list of participants for those meetings and/or discussions, and transcripts and notes of any such meetings and/or discussions) sent or received by the following EPA offices:
  - i. The Office of the Administrator;
  - ii. The Office of Air and Radiation;
  - iii. The Office of Chemical Safety and Pollution Prevention;
  - iv. The Office of Enforcement and Compliance Assurance;
  - v. The Office of Environmental Information;
  - vi. The Office of General Counsel;

- vii. The Office of Inspector General;
- viii. The Office of International and Tribal Affairs;
- ix. The Office of Research and Development;
- x. The Office of Solid Waste and Emergency Response;
- xi. The Office of Water;
- xii. Region 1;
- xiii. Region 2;
- xiv. Region 3;
- xv. Region 4;
- xvi. Region 5;
- xvii. Region 6;
- xviii. Region 7;
- xix. Region 8;
- xx. Region 9; or
- xxi. Region 10.

(including receipt by carbon copy or blind carbon copy), regarding the Subject including, but not limited to, documents sent by or received from individuals representing or employed by the Interested Organizations or Other Organizations.

This request is not meant to be exclusive of any other records which, though not specifically requested, would have a reasonable relationship to the subject matter of this request.

“Interested Organizations” include the;

- 1. AFL-CIO
- 2. American Lung Association
- 3. American Nurses Association
- 4. Appalachian Center for the Economy and the Environment and Public Justice
- 5. Appalachian Mountain Club
- 6. Biodiversity Conservation Alliance
- 7. Center for Biological Diversity
- 8. Chesapeake Bay Foundation
- 9. Coal River Mountain Watch
- 10. Coalition for Clean Air
- 11. Coalition for Safe Environment
- 12. Colorado Environmental Coalition
- 13. Conservation Law Foundation
- 14. Conservation Northwest
- 15. Defenders of Wildlife
- 16. Delaware Riverkeeper Network

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17. Desert Citizens Against Pollution
18. Dine Citizens Ruining Our Environment
19. Door County Environmental Council
20. Environment Activist League
21. Environment America
22. Environment California
23. Environmental Defense Fund
24. Environmental Integrity Project
25. Environmental Law and Policy Center
26. Farm Labor Organizing Committee
27. Florida Wildlife Federation
28. Friends of Animals
29. Grand Canyon Trust
30. Greater Yellowstone Coalition
31. Green Law
32. Greenpeace
33. Gulf Restoration Network
34. Habitat Education Center
35. Iowa Environmental Council
36. Izaak Walton League of America
37. Kentucky Environmental Foundation
38. Kentucky Waterways Alliance
39. Louisiana Environmental Action Network
40. Medical Advocates for Healthy Air
41. Michigan Nature Association
42. Migrant Clinicians Network
43. Minnesota Center for Environmental Advocacy
44. Missouri Coalition for the Environment
45. Montana Environmental Information Center
46. Montanans Against Toxic Burning
47. Mossville Environmental Action NOW
48. National Parks Conservation Association
49. National Wildlife Federation
50. Natural Resources Defense Council
51. Natural Resources Council of Maine
52. Northwest Treeplanters and Farmworkers United
53. Northwoods Wilderness Recovery
54. Ohio Environmental Council
55. Oregon Natural Desert Association

56. Our Children's Earth Foundation
57. Pacific Coast Federation of Fishermen's Associations
58. Pesticide Action Network North America
59. Physicians for Social Responsibility
60. Plains Justice
61. Powder River Basin Resource Council
62. Prairie Rivers Network
63. Red Rock Forests
64. Riverkeeper
65. San Juan Citizens Alliance
66. Save the Bay
67. Sierra Club
68. Southern Environmental Law Center
69. Southern Utah Wilderness Alliance
70. Tennessee Clean Water Network
71. United Farm Workers
72. Valley Watch
73. Waterkeeper Alliance
74. Western Colorado Congress
75. Western Resource Advocates
76. Western Watersheds Project
77. WildEarth Guardians
78. Wilderness Society
79. Wilderness Workshop
80. Winter Wildlands Alliance