

Exhibit D

From: Thomas Cmar
Sent: Friday, August 25, 2017 4:33 PM
To: walker.denise@epa.gov; scozzafava.michaele@epa.gov
Subject: FW: EPA-HQ-2017-010217, Clarification and Initial Response

Dear Ms. Walker and Mr. Scozzafava,

Thank you for discussing this request with me on Tuesday. After reviewing EPA's proposed search strings, we would like to propose some additional strings:

- "FGD"
- "FGDW"
- "BATW"
- "flue gas desulfurization"
- "bottom ash"
- "fly ash"
- "scrubber"
- "subbituminous" or "sub-bituminous"
- "selenium" within ten words of "power plant"
- "Utility Water Act Group" within ten words of "ELG"
- "UWAG" within ten words of "ELG"
- "Hunton" within ten words of "ELG"
- "Small Business Administration" within ten words of "ELG"
- "SBA" within ten words of "ELG"
- "stay" within ten words of "ELG"
- "reconsider" within ten words of "ELG"
- "reconsideration" within ten words of "ELG"
- "stay" within ten words of "Steam Electric"
- "reconsider" within ten words of "Steam Electric"
- "reconsideration" within ten words of "Steam Electric"
- "UWAG" within ten words of "Steam Electric"
- "Utility Water Act Group" within ten words of "Steam Electric"
- "Hunton" within ten words of "Steam Electric"
- "Small Business Administration" within ten words of "Steam Electric"
- "SBA" within ten words of "Steam Electric"

Also, so there is no future misunderstanding of our position, we do not agree with the statement in your email that "[t]he processing clock is stopped for your FOIA request until we receive your clarification or modification related to the key words we discussed." We do not believe that EPA has the authority under FOIA to grant itself additional time to respond to our FOIA request other than that expressly provided by the statute. There is no provision in FOIA that authorizes an agency to grant itself additional time to respond to a request in this manner. We submitted this request on August 4, 2017. Taking into account the "unusual circumstances" extension of time that the Agency has invoked, by my count EPA's response is due by September 11, 2017. If we do not receive a lawful response from EPA to our FOIA request on or before September 11, 2017, we reserve the right to seek legal remedies to compel a lawful response.

Please do not hesitate to contact me if you have any questions or would like to discuss this request further. Thank you for your prompt attention to this email.

Best,

Thom Cmar
Earthjustice
(312) 257-9338 (cell)
tcmarm@earthjustice.org

From: zipf.lynn@epa.gov [mailto:zipf.lynn@epa.gov]
Sent: Tuesday, August 22, 2017 5:15 PM
To: Thomas Cmar
Subject: EPA-HQ-2017-010217, Clarification and Initial Response

08/22/2017 05:55 PM
FOIA Request: EPA-HQ-2017-010217

Dear Mr. Cmar:

Thank you for your Freedom of Information Act request. This letter concerns the above-referenced Freedom of Information Act (FOIA) request, received by the U.S. Environmental Protection Agency (EPA or Agency) on August 04, 2017 in which you requested:

All records since April 25, 2017 concerning EPA reconsideration, and postponement of compliance deadlines, of the “Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category” rule (the “Steam Electric ELGs rule”).

1. Records created, stored, or received by the EPA Administrator, any of the Administrator’s staff, or the EPA Office of Water concerning reconsideration of the Steam Electric ELGs rule;
2. Communications between EPA (or the Department of Justice) and the Utility Water Act Group, the law firm Hunton & Williams LLP, and/or any other entity or individual representing an electric generating utility or the utility industry, concerning the Steam Electric ELGs rule;
3. Records reflecting communications between EPA (or the Department of Justice) and the White House, the U.S. Small Business Administration, the Tennessee Valley Authority, or any other federal agency concerning the Steam Electric ELGs rule.

I. Clarification

On August 22, 2017 Denise Walker and Mike Scozzafava called you to clarify the custodians, search terms, and date range for this request and explore potential ways to narrow the request.

EPA’s FOIA regulations state:

“Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter. If known, you should include any file designations or descriptions for the records that you want. The more specific you are about the records or type of records that you want, the more likely EPA will be able to identify and locate records responsive to your request.”

40 C.F.R. § 2.102(c).

We agreed on the following:

Date Range: April 25, 2017 to date of search

Custodians: As we discussed, the records location is EPA Headquarters. EPA will search the custodians below in the Office of Water and the Administrator's Office.

Administrator Office Custodians:

Administrator Pruitt

Sarah Greenwalt

Ryan Jackson

Byron Brown

Samantha Dravis

Layne Bangerter

Don Benton

Myron Ebell

Holly Greaves

David Schnare

Brittany Bolen

Shannon Kenny

Derek Threet

Mike Scozzafava

Office of Water Custodians

Sean Ramach

Scott Wilson

Ron Jordan

Besty Southerland

Robert Wood

Jan Matuszko

Mike Shapiro

Benita Best-Wong

Keywords:

During the call we also discussed potential keywords. EPA proposed to craft a search for electronic records that adds additional terms to the search created for your previous Steam Electric request (EPA-HQ-2017-005671) as follows:

“Steam Electric Rule,” OR "Part 423," OR "Steam Electric Effluent Guidelines," OR "Steam Electric Effluent Limitations Guidelines and Standards," OR "power plant guidelines," OR "flue gas desulphurization," OR "November 1, 2018", OR "December 31, 2023", OR “Steam Electric ELG”, OR [Wastewater within 10 words of "FGD," or "gasification"], OR [Transport water within 10 words of "bottom ash," or "fly ash"] OR [“Power plant” within 10 words of “ELG”] OR [“Wastewater” within 10 words of “bottom ash” or “fly ash”]

AND

“705” OR “postponement” OR “stay” OR "compliance date” OR “compliance dates” OR "compliance deadline"

You agreed to review these keywords and provide feedback to EPA via e-mail to Denise Walker and Mike Scozzafava Walker.Denise@epa.gov and Scozzafava.MichaelE@epa.gov

In addition, you agreed that EPA does not need to produce records that are in the rulemaking docket or drafts of those records.

II. Unusual Circumstances and Extension of Time

Pursuant to 40 C.F.R. § 2.104(d), an extension of time to respond to your request is necessary. Given the request as written, EPA anticipates that the response will require:

- significant amount of EPA’s resources and time to search for, and appropriately examine the voluminous amount of records to complete this request
- collection of the requested records from multiple EPA offices that are separate from the office processing the request” and/or
- consultation with another agency having a substantial interest in the determination of the request.

III. Processing Fees

As of August 22, 2017, the EPA’s National Freedom of Information Office is still evaluating the the fee waiver request that accompanied the FOIA request.

IV. Publicly Available Information

The following link provides publicly available information that you can access immediately:

Steam Electric Power Generating Effluent Guidelines - 2015 Final Rule

<https://www.epa.gov/eg/steam-electric-power-generating-effluent-guidelines-2015-final-rule>

V. Next Steps

The processing clock is stopped for your FOIA request until we receive your clarification or modification related to the key words we discussed.

You may email Michael Scozzafava at Scozzafava.MichaelE@epa.gov or Denise Walker at walker.denise@epa.gov with your response or contact Denise Walker at 202-564-6520 if you have any further questions. If we do not receive a response from you by September 28, 2017, we will consider your request to be voluntarily withdrawn. Once the request is clarified we will continue processing your FOIA request and provide you with an estimated timeframe for completion. If you wish to request information connected to this request in the future, please reference the FOIA request number.

Additionally, you may seek assistance from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769

If you wish to request information connected to this request in the future, please reference the FOIA request number.

Sincerely,

Denise A. Walker