

Friends of the Earth * Sierra Club * Oil Change International

February 2, 2014

Office of Information Programs and Services
A/GIS/IPS/RL
U. S. Department of State
Washington, D.C. 20522-8100
Facsimile: (202) 261-8579

Re: *Freedom of Information Act Request – Expedited Processing Requested*

Dear Freedom of Information Act Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Friends of the Earth, the Sierra Club and Oil Change International (hereinafter, the “Parties”) request all records, documents, and materials pertaining to the planned release date and/or content of the Keystone XL Final Supplemental Environmental Impact Statement occurring from November 1, 2013 through January 31 2014 between State Department staff (including but not limited to Keith Benes, Kerri-Ann Jones and Genevieve Walker) and the following parties:

- American Petroleum Institute (API),
- TransCanada,
- Government of Alberta,
- Government of Canada,
- or other oil industry representatives,
- or law firms representing the above entities.

This request includes documents regarding meetings or communications or other contacts—including meeting minutes and scheduling notes—that any individual from any of the entities listed above arranged or attended with the State Department or that the State Department arranged or attended with any of the listed entities.

Our request includes but is not limited to communications with or by the following individuals employed by or contracted by the above listed entities regarding the Keystone XL pipeline:

Jack Gerard, American Petroleum Institute
Russ Girling, TransCanada
Paul Elliot, TransCanada
Joe Oliver, Canadian Minister of Natural Resources

For purposes of this request, “documents, records, and materials” should be interpreted to include copies of all correspondence, including, but not limited to, internal memoranda, memoranda and correspondence with any other federal, state or foreign agencies or individuals, papers, maps, data, scientific (clinical and nonclinical) studies, samples, schematics, field notes/reports, telephone logs, briefing/application documents, electronic mail, scheduling notes, meeting minutes, other correspondence between meeting attendees or those who scheduled meetings, and notes documenting any communication (regardless of physical form or characteristics) concerning the specific requests above.

Expedited Processing Request

Pursuant to 5 U.S.C. § 552(a)(6)(E)(i) and 22 C.F.R. § 171.12(b), the Parties request *expedited processing of this FOIA request due to our compelling need for the information requested*. A “compelling need” exists where the requester is “primarily engaged in disseminating information” and can demonstrate that “[t]he information is urgently needed ... in order to inform the public concerning actual or alleged Federal Government activity.” 22 C.F.R. § 171.12(b)(2); *see also* 5 U.S.C. § 552(a)(6)(E)(v). Friends of the Earth, Sierra Club, and Oil Change International are all non-profit organization primarily engaged in information dissemination, public education and advocacy on environmental issues. The Parties will be taking numerous steps to disseminate the requested information to the public, and have a demonstrated and longstanding capacity to do so. We typically disseminate similar information through direct communication to journalists and other members of the media, through press releases, through newsletters to all of our members, through our web sites, through public meetings, and through other legislative and executive fora. The “[a]ctual or alleged Federal Government activity” to which the requested information pertains is the State Department’s decision whether to grant a Presidential Permit for the Keystone XL project.

The Parties urgently needs this information because the particular value of the information “will be lost if not disseminated quickly.” 22 C.F.R. § 171.12(b)(2)(i). The State Department issued the Final supplemental environmental impact statement (EIS) for the Keystone XL project in January 31, 2014, and the public comment period will close on March 7, 2014. The State Department decision on whether to grant TransCanada the Presidential Permit to build the Keystone XL pipeline across the U.S.-Canada border is expected to be made within the next few months, and is therefore imminent. The information requested will lose value to the Parties if they do not receive it in time to disseminate it to the public for its use in participating in the environmental review process. The Parties seek to use this information in comments pertaining to the approval of the Keystone XL pipeline, including the current environmental review being conducted by State under the National Environmental Policy Act and any Presidential permit review and approval. The State Department’s permitting decision is an action “taken, contemplated or alleged by or about” the State Department, an agency of the U.S. Government. 22 C.F.R. § 171.12(b)(2)(ii). The Parties reserve the right to appeal any denial of our request for expedited processing of this request.

We ask that State’s response comply with the Attorney General’s March 2009 FOIA memorandum, reiterating President Obama’s directive that in “the face of doubt, openness prevails.” Attorney General, Memorandum for Heads of Executive Departments and Agencies at

1 (March 19, 2009) (Attorney General Memorandum). Accordingly, we expect that State will apply a presumption in favor of disclosure and consider that it “should not withhold information simply because it may do so legally.” *Id.*; *see also* 40 C.F.R. § 1506.6(f) (noting the intersection of the National Environmental Policy Act and FOIA). We also expect that State will act promptly, in keeping with the Attorney General’s admonition that the timely disclosure of information “is an essential component of transparency.” Attorney General Memorandum at 3.

Fee Waiver Request

As non-profit organizations, the Parties also requests a waiver of all fees incurred in providing these records. Disclosure of the requested information “is in the public interest because it is likely to contribute significantly to the public understanding of the operation or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552 (a)(4)(A) (iii)). If our request for a fee waiver is denied and any expenses associated with this request are in excess of \$25.00, please obtain our approval before any such charges are incurred.

Disclosure of the requested information would inform the public of governmental activities affecting their safety, health and environment. The Parties are each not-for-profit charitable organizations with no commercial interest in the information requested and has relevant expertise in the areas of environment and human health and environmental law. The Parties have a long and active history in addressing threats to human health and the environment posed by the development, production, shipment and processing of oil and gas, including tar sands oil. The Parties also have additional relevant experience with the proper implementation of the National Environmental Policy Act and other relevant statutes governing the Obama administration’s consideration of the Keystone XL pipeline project request.

Because of the non-profit, public interest nature of the Parties, we have extremely limited financial resources with which to cover the copying and search expenses of this request. Our main purpose in requesting the documents is to increase public knowledge and participation in the government process so fundamental to the effective working of a democracy.

Timely Response and Request for Rolling Release

Pursuant to 5 U.S.C. § 552(a)(6)(E)(ii)(I), we expect a response within ten (10) working days of your receipt of this request. If this request is denied in whole or in part, we expect a detailed justification for withholding the records. We also request any segregable portions of records that are otherwise not expected to be disclosed by State in response to this request. **Finally, we request that State release any documents responsive to this request to the Parties on a rolling basis** rather than State holding all of the documents for a one-time release. The Parties reserve the right to appeal any denial of this request.

Please contact us at the number(s) or email(s) listed below with any questions you may have about the materials we are requesting. Thank you for your immediate attention to this matter.

Sincerely,

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