

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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|--|---|--------------------------------------|
| CITIZENS FOR RESPONSIBILITY |) | |
| AND ETHICS IN WASHINGTON, |) | |
| <i>et al.</i> |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Civil Action No. 1:18-cv-00406 (JEB) |
| |) | |
| ANDREW WHEELER, Acting |) | |
| Administrator, U.S. |) | |
| Environmental Protection Agency, <i>et al.</i> |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

ANSWER

Defendants Andrew Wheeler, Acting Administrator, U.S. Environmental Protection Agency, and U.S. Environmental Protection Agency, by and through undersigned counsel, hereby answer Plaintiff’s Complaint for Declaratory and Injunctive Relief (“Complaint”), ECF No. 1.

1. This paragraph consists of Plaintiffs’ characterization of the Complaint, not allegations of fact to which a response is required.

2. This paragraph consists of Plaintiffs’ characterization of the Complaint, not allegations of fact to which a response is required.

3. This paragraph consists of conclusions of law, not allegations of fact to which a response is required.

4. This paragraph consists of conclusions of law, not allegations of fact to which a response is required.

5. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

6. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first and second sentences of this paragraph. Admit that CREW sent EPA the letters described in the third and fourth sentences, which speak for themselves.

7. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence. As to the second sentence, admit that a search of FOIAonline, EPA's online FOIA submission and tracking tool, for requests submitted by "CREW" or "Citizens for Responsibility and Ethics in Washington" indicates that between January 2017 and the filing of the Complaint, CREW had submitted approximately 12 FOIA requests to EPA, of which 9 remain outstanding; otherwise deny. The third sentence consists of conclusions of law, not allegations of fact to which a response is required.

8. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

9. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

10. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

11. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph. As to the second sentence, admit that between January 2017 and the filing of the Complaint, PEER filed four lawsuits against EPA concerning FOIA requests. The third sentence consists of conclusions of law, not allegations of fact to which a response is required.

12. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

13. As to the first sentence, admit that as of the filing of the Complaint, Scott Pruitt was Administrator of the EPA (the Acting Administrator is now Andrew Wheeler); the remainder of the sentence consists of Plaintiffs' characterization of the Complaint, not allegations of fact to which a response is required. The second and third sentences consist of conclusions of law, not allegations of fact to which a response is required.

14. This paragraph consists of conclusions of law, not allegations of fact to which a response is required.

15. As to the first sentence, admit that David S. Ferriero is the Archivist of the United States; the remainder of the sentence consists of Plaintiffs' characterization of the Complaint, not allegations of fact to which a response is required. The remainder of the paragraph consists of conclusions of law, not allegations of fact to which a response is required.

16. This paragraph consists of conclusions of law, not allegations of fact to which a response is required.

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28. This paragraph consists of conclusions of law, not allegations of fact to which a response is required.

29. This paragraph consists of conclusions of law, not allegations of fact to which a response is required.

30. This paragraph consists of conclusions of law, not allegations of fact to which a response is required.

31. Admit that EPA's former Records Management Policy, Records Management Policy No. 2155.3, contained the quoted language and otherwise respectfully refer the Court to Records Management Policy No. 2155.3 for a full and complete statement of its contents. Defendants further observe that Records Management Policy No. 2155.3 has been superseded by Interim Records Management Policy 2155.4, which is available at

<https://www.epa.gov/sites/production/files/2018-09/documents/interim-records-mgmt-policy-20180822.pdf>.

32. Admit that EPA's former Records Management Policy, Records Management Policy No. 2155.3, contained the quoted language and otherwise respectfully refer the Court to Records Management Policy No. 2155.3 for a full and complete statement of its contents. Defendants further observe that Records Management Policy No. 2155.3 has been superseded by Interim Records Management Policy No. 2155.4, which is available at <https://www.epa.gov/sites/production/files/2018-09/documents/interim-records-mgmt-policy-20180822.pdf>.

33. As to the first sentence, admit that EPA's former Records Management Policy, Records Management Policy No. 2155.3 contained the quoted language and otherwise respectfully refer the Court to Records Management Policy No. 2155.3 for a full and complete statement of its contents. The second and third sentences consist of Plaintiffs' characterization of Records Management Policy No. 2155.3; Defendants respectfully refer the Court to Records Management Policy No. 2155.3 for a full and complete statement of its contents. Defendants further observe that Records Management Policy No. 2155.3 has been superseded by Interim Records Management Policy No. 2155.4, which is available at <https://www.epa.gov/sites/production/files/2018-09/documents/interim-records-mgmt-policy-20180822.pdf>.

34. This paragraph consists of Plaintiffs' characterization of EPA's former Records Management Policy, Records Management Policy No. 2155.3; Defendants respectfully refer the Court to Records Management Policy No. 2155.3 for a full and complete statement of its contents. Defendants further observe that Records Management Policy No. 2155.3 has been superseded by Interim Records Management Policy No. 2155.4, which is available at

<https://www.epa.gov/sites/production/files/2018-09/documents/interim-records-mgmt-policy-20180822.pdf>.

35. Admit that EPA's former Records Management Policy, Records Management Policy No. 2155.3 did not contain language expressly stating that records "of all substantive decisions and commitments reached orally (person-to-person, by telecommunications, or in conference)" must be created; otherwise deny. Defendants further observe that Records Management Policy No. 2155.3 has been superseded by Interim Records Management Policy 2155.4, which is available at <https://www.epa.gov/sites/production/files/2018-09/documents/interim-records-mgmt-policy-20180822.pdf>.

36. Because the phrase "extensive secrecy" is undefined and vague and the word "adequate" implies a legal conclusion, Defendants are unable to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

37. As to the first sentence, admit that prior to his confirmation as EPA Administrator, Mr. Pruitt was the Attorney General of Oklahoma, that in that capacity he filed lawsuits against EPA, and that certain of those lawsuits received public attention; because the phrase "established himself" is undefined and vague, Defendants are unable to admit or deny the remaining allegations of this sentence. The second and third sentences represent Plaintiffs' characterization of articles in the *New York Times* and the website www.exposedbycmd.org, to which Defendants respectfully refer the Court for a full and complete statement of their contents.

38. This paragraph consists of Plaintiffs' characterization of a *New York Times* article, to which Defendants respectfully refer the Court for a full and complete statement of its contents.

39. This paragraph consists of Plaintiffs' characterization of a *New York Times* article, to which Defendants respectfully refer the Court for a full and complete statement of its contents.

40. This paragraph consists of Plaintiffs' characterization of articles in the *New York Times* and the *Washington Post*, to which Defendants respectfully refer the Court for a full and complete statement of their contents.

41. As to the first and second sentences, admit that the previous administration issued a rule, Clean Water Rule: Definition of "Waters of the United States," 80 Fed. Reg. 37053, as well as an accompanying cost-benefit analysis; respectfully refer the Court to those documents for a full and complete statement of their contents, and otherwise deny. As to third sentence, Defendant lacks knowledge at this time sufficient to form a belief as to the truth of this allegation, and therefore denies it; to the extent EPA produced a new analysis of the rule regarding economic benefits, those documents speak for themselves. The fourth and fifth sentences consist of Plaintiffs' characterization of a *New York Times* article, and Defendants respectfully refer the Court to the relevant *New York Times* article for a full and complete statement of its contents.

42. The first sentence consists of a legal conclusion, rather than allegations of fact to which a response is required; to the extent that a response is require, deny. As to the second sentence, admit that PEER filed the cited FOIA request, to which Defendants respectfully refer the Court for a full and complete statement of its contents; deny that this filing represents an "example" of any misconduct.

43. This paragraph contains a characterization of an unrelated FOIA request submitted to EPA by Plaintiff, to which Defendants respectfully refer the Court for a full and complete statement of its contents.

44. This paragraph contains a characterization of an unrelated FOIA request and lawsuit which is currently pending, to which Defendants respectfully refer the Court for a full and complete statement of its contents.

45. Deny the first sentence. As to the second and third sentences, admit that EPA obligated funds from its FY 2017 Environmental Programs and Management appropriation account for the installation of a booth for the Administrator's office, and deny the remaining allegations.

46. The phrase "costly and burdensome" is undefined and vague, and Defendants are therefore unable to admit or deny the allegations of the first sentence; to the extent that a response is required, deny. As to the second sentence, admit that general access without appointment to certain political offices on the third-floor of EPA headquarters was restricted; deny that all such offices were so restricted. As to the third sentence, admit that former Administrator Pruitt traveled with a 24-hour security detail, which had not been the typical practice of prior EPA administrators.

47. This paragraph consists of Plaintiffs' characterization of a *Mother Jones* article, to which Defendants respectfully refer the Court for a full and complete statement of its contents.

48. The first clause of the first sentence consists of conclusions of law, not allegations of fact to which a response is required. Insofar as "sweeping and consequential" is undefined and vague, Defendants lack sufficient information to admit or deny the allegations of the second clause of the first sentence. As to the third sentence, admit that EPA has begun the process of modifying certain rules; because the phrase "taken action to reverse" is undefined and vague, Defendants are unable to admit or deny a specific number.

49. The allegations in this paragraph relate to a claim that has been dismissed from this lawsuit. Accordingly, no response is required. To the extent a response is deemed required, Defendants request an opportunity to supplement their response.

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53. The allegations in this paragraph relate to a claim that has been dismissed from this lawsuit. Accordingly, no response is required. To the extent a response is deemed required, Defendants request an opportunity to supplement their response.

54. Defendants incorporate by reference their responses to all preceding paragraphs.

55. This paragraph consists of conclusions of law, not allegations of fact to which a response is required.

56. This paragraph consists of conclusions of law, not allegations of fact to which a response is required.

57. Deny

58. Deny.

59. This paragraph consists of conclusions of law, not allegations of fact to which a response is required. To the extent that a response is required, deny.

60. Deny.

61. This paragraph consists of a request for relief, rather than allegations of fact to which a response is required. To the extent that a response is required, deny that Plaintiffs are entitled to this or any other relief whatsoever.

62. Defendants incorporate by reference their responses to all preceding paragraphs.

63. This paragraph consists of conclusions of law, not allegations of fact to which a response is required.

64. As to the first sentence, admit that there has been a written management policy since at least 2015; the remainder of the sentence consists of a legal conclusion to which no response is required, but to the extent that a response is deemed required, deny. Deny the second sentence.

65. As to the first sentence, admit that former Records Management Policy 2155.3 did not contain language expressly stating that records “of all substantive decisions and commitments reached orally (person-to-person, by telecommunications, or in conference)” must be created, otherwise deny. Deny the second sentence. Defendants further observe that Records Management Policy No. 2155.3 has been superseded by Interim Records Management Policy No. 2155.4, which is available at <https://www.epa.gov/sites/production/files/2018-09/documents/interim-records-mgmt-policy-20180822.pdf>.

66. This paragraph consists of a request for relief, rather than allegations of fact to which a response is required. To the extent that a response is required, deny that Plaintiffs are entitled to this or any other relief whatsoever.

67. Defendants incorporate by reference their responses to all preceding paragraphs.

68. The allegations in this paragraph relate to a claim that has been dismissed from this lawsuit. Accordingly, no response is required. In addition, this paragraph consists of conclusions of law, rather than allegations of fact to which a response is required.

69. The allegations in this paragraph relate to a claim that has been dismissed from this lawsuit. Accordingly, no response is required. In addition, this paragraph consists of conclusions of law, rather than allegations of fact to which a response is required.

70. The allegations in this paragraph relate to a claim that has been dismissed from this lawsuit. Accordingly, no response is required. To the extent a response is deemed required, Defendants request an opportunity to supplement their response.

71. The allegations in this paragraph relate to a claim that has been dismissed from this lawsuit. Accordingly, no response is required. In addition, this paragraph consists of a request for relief, rather than allegations of fact to which a response is required. To the extent that a response is required, deny that Plaintiffs are entitled to this or any other relief whatsoever.

The remainder of the Complaint constitutes a Prayer for Relief, to which no response is required.

AFFIRMATIVE DEFENSES

1. The Court lacks subject matter jurisdiction.
2. Plaintiff fails to state a claim on which relief may be granted.

THEREFORE, having fully answered, Defendants assert that Plaintiffs are not entitled to the relief requested, or to any relief whatsoever, and request that this action be dismissed with prejudice and the Defendants be given such other relief as the Court deems just and proper. Each and every allegation of the Complaint not heretofore expressly admitted or denied is hereby denied.

Dated: September 24, 2018

Respectfully submitted,

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Assistant Attorney General

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/s/ Steven A. Myers

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