

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND	)	
ETHICS IN WASHINGTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 14-1763 RMC
	)	
	)	
UNITED STATES ENVIRONMENTAL	)	
PROTECTION AGENCY	)	
Defendant.	)	
_____	)	

ANSWER

Defendant, the United States Environmental Protection Agency ("EPA"), by and through undersigned counsel, hereby responds to Plaintiff's complaint as follows:

The Complaint

Defendant answers the numbered paragraphs of Plaintiff's complaint by denying the allegations contained therein, except as expressly admitted below.

1. This paragraph contains Plaintiff's description of its suit, to which no answer is required. Insofar as an answer may be deemed necessary, Defendant denies that it has failed to disclose responsive records to Plaintiff, but admits that it has not completed its search for responsive records.

2. The allegations in Paragraph 2 consist of characterizations of the relief that Plaintiff is seeking rather

than allegations of fact to which a response would be required. Defendant therefore denies the characterizations, but admits that EPA denied Plaintiff's request for expedited processing.

JURISDICTION AND VENUE

3. This paragraph contains assertions of jurisdiction and venue, legal conclusions rather than allegations of fact to which a response would be required. To the extent that a response is deemed necessary, Defendant admits that this Court would have jurisdiction and venue in a Freedom of Information Act ("FOIA") case in which an agency has improperly withheld records responsive to a proper FOIA request, but denies any improper withholding or that all of Plaintiff's claims can be pursued under the FOIA.

PARTIES

4. This paragraph contains Plaintiff's description of its organization and mission/purpose, to which no answer is required. Insofar as an answer may be deemed necessary, Defendant is without sufficient knowledge to admit or deny this paragraph.

5. The allegations in this paragraph constitute characterizations of purported harm rather than allegations of fact to which no response is required. Insofar as an answer may be deemed necessary, Defendant lacks sufficient knowledge to admit or deny these assertions; accordingly, they are denied.

6. The first sentence in this paragraph is admitted. As to the second sentence, Defendant admits that it may have additional responsive records and that it has a responsibility to respond to Plaintiff's FOIA requests subject to exemptions, exclusions or other limitations available under the FOIA.

FACTUAL BACKGROUND

7. As to the first sentence in this paragraph, Defendant denies that each year EPA sets the RFS for how much renewable fuel must be blended into transportation fuel supplies, but admits that the Clean Air Act directs EPA to establish percentage RFS standards on an annual basis, and that such standards must either reflect renewable fuel volumes set forth in the Clean Air Act or reduced renewable fuel volumes determined by EPA pursuant to the exercise of its statutory waiver authorities. The second sentence contains plaintiff's characterizations of the renewable fuel standards rather than allegations of fact to which a response would be required. As to the third sentence, Defendant admits that in November 2013 EPA issued a proposed rule to establish RFS requirements for 2014, and admits that it proposed to exercise its statutory waiver authorities to use a lower total renewable fuel volume in calculating the total renewable fuel percentage standard than the applicable volume for total renewable fuel for 2014 that is set forth in the Clean Air Act.

8. Defendant denies that this was the first time that EPA proposed to decrease from statutory levels the amount of renewable fuel required to be blended into transportation fuel supplies, since EPA has consistently proposed and required less cellulosic biofuel than statutory applicable volumes. However, Defendant admits that it first proposed such a reduction for total renewable fuels in November 2013. Defendant lacks sufficient knowledge to admit or deny the remaining assertions in this paragraph; accordingly, they are denied.

9-10. Defendant lacks sufficient knowledge to admit or deny the assertions in these paragraphs; accordingly, they are denied.

11-14. The paragraphs contain Plaintiff's characterizations of Plaintiff's action rather than allegations of fact to which a response would be required. To the extent that a response may be deemed necessary, Defendant lacks sufficient knowledge to admit or deny the assertions in these paragraphs; accordingly, they are denied.

15. Defendant admits receiving a FOIA request dated May 28, 2014, from CREW and respectfully refers the Court to the cited document for a full, fair and accurate account of its contents.

16. Defendant admits that CREW's request also sought expedited processing of its request and respectfully refers the

Court to the cited document for a full, fair and accurate account of its contents. To the extent paragraph 16 contains characterizations of CREW's action and the purported benefits it seeks through expedited processing of its request, Defendant lacks sufficient knowledge to admit or deny these characterizations; accordingly, they are denied.

17. EPA admits that CREW's request certified the basis for its request for expedited processing and respectfully refers the Court to the cited document for a full, fair and accurate account of its contents.

18. EPA admits that CREW included news articles with its request for expedition and respectfully refers the Court to the cited documents for a full, fair and accurate account of their contents. The remainder of this paragraph is Plaintiff's characterization of the materials rather than allegations of fact to which a response would be required; accordingly, the characterizations are denied.

19. Defendant admits that it denied CREW's request for expedition by letter dated June 13, 2014 and respectfully refers the Court to the cited document for a full, fair and accurate account of its contents.

20-21. Admitted.

22. Defendant admits the first and second sentences of this paragraph except to deny Plaintiff's characterization that

EPA's response followed much prompting from CREW. Defendant admits that EPA did not provide a promised date for completion, and further admits that its September 26, 2014 letter to CREW did not specify administrative appeal rights. Defendant respectfully refers the Court to the cited document for a full, fair and accurate account of its contents.

23. This paragraph contains plaintiff's characterization of defendant's action and the FOIA law rather than allegations of fact to which a response is required. EPA admits that it has not completed its search of documents responsive to CREW's request, and therefore has not made final decisions regarding each document it will release and each document that it will withhold. However, EPA made a second document release to CREW on November 13, 2014 that includes responsive records representing communications between EPA and members of Congress between January 1, 2014 and July 31, 2014.

PLAINTIFF'S CLAIMS FOR RELIEF

CLAIM ONE

24. Defendant incorporates by reference its responses to Paragraphs 1 through 23 above as if fully set forth herein.

25. Defendant admits that Plaintiff asked for records, some of which were in the custody and control of EPA. The remainder of this paragraph contains Plaintiff's legal

conclusions, to which no response is required. To the extent a response is required, Defendant denies these conclusions.

26-28. These paragraphs contain Plaintiff's legal conclusions rather than allegations of fact to which a response would be required. To the extent a response is deemed required, Defendant denies these conclusions.

CLAIM TWO

29. Defendant incorporates by reference its responses to Paragraphs 1 through 28 above as if fully set forth herein.

30. This paragraph contains Plaintiff's legal conclusions, to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 30.

31-32. Denied.

Requested Relief

This paragraph, consisting of subparagraphs (1) through (6) contains Plaintiff's request for relief, to which no answer is required. Insofar as an answer may be deemed necessary, Defendant denies that Plaintiff is entitled to any relief from the Court.

FIRST AFFIRMATIVE DEFENSE

33. Defendant has not improperly withheld records under the Freedom of Information Act ("FOIA").

SECOND AFFIRMATIVE DEFENSE

34. The Court lacks subject-matter jurisdiction over any portions of Plaintiffs' request for relief that exceed the relief authorized by statute under FOIA, 5 U.S.C. § 552 *et. seq.*

THIRD AFFIRMATIVE DEFENSE

35. Certain documents requested in this action were properly withheld or redacted pursuant to 5 U.S.C. § 552(b).

FOURTH AFFIRMATIVE DEFENSE

36. Plaintiffs are not entitled to declaratory relief. See 5 U.S.C. § 552(a)(4)(B).

All allegations not specifically admitted in the Answer are denied.

WHEREFORE, having fully answered, Defendant asks the Court to establish an appropriate schedule to complete processing of Plaintiff's FOIA request, and thereafter enter judgment for Defendant, dismissing the Complaint with prejudice and awarding

Defendant such other and further relief as the Court deems just, equitable, and proper.

Respectfully submitted,

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By: _____ /s/
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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Answer has been made through the Court's electronic transmission facilities on the 26th day of November, 2014.

_____/s/
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