



November 23, 2020

VIA [FOIAONLINE](#)

U.S. Environmental Protection Agency
Region #1

Re: Freedom of Information Act Request

Dear Freedom of Information Act Officer:

Sierra Club respectfully submits this request for records, described below, pursuant to the Freedom of Information Act (FOIA).¹ Sierra Club is a leading non-governmental organization seeking to educate and mobilize the public on issues regarding climate change, fossil fuel and renewable energy, and government accountability and transparency.

REQUESTED RECORDS

Sierra Club requests the following records in the possession, custody, or control of the U.S. Environmental Protection Agency (EPA) related to the **Schiller Station Power Plant**, located in Portsmouth, New Hampshire. **The timeframe for this request is July 30, 2020 to the present.** Sierra Club requests:

- Any documents submitted by **Granite Shore Power Schiller LLC** (including Atlas Holdings LLC, Castleton Commodities International LLC, or Energy Trading Innovations), operators of Schiller Station Power Plant, to EPA pursuant to Part I.A.11.b.1.iii. of NPDES Permit No. NH0001473 concerning the wedgewire screen intake system described in that permit.
- Any communications between **Granite Shore Power Schiller LLC** (including Atlas Holdings LLC, Castleton Commodities International LLC, or Energy Trading Innovations), operators of Schiller Station Power Plant, and EPA concerning modification of NPDES Permit No. NH0001473.

FORMAT OF REQUESTED RECORDS

¹ 5 U.S.C. § 552.

All records are specifically requested in electronic form.² If any of the requested records in electronic form are too large to send via e-mail, Sierra Club can provide an online dropbox in which the large documents can be uploaded. If you are able to provide some records more rapidly than others, we ask that you please forward those records as they become available.

EXEMPT RECORDS

If EPA asserts any requested documents are subject to a FOIA disclosure exemption, please include sufficient information for the Sierra Club to appeal the denial.³ If EPA withholds any records or portions of records as exempt from disclosure, we request that you segregate the exempt portions and deliver the non-exempt portions of such records within the statutory time limit.⁴

RECORD DELIVERY

We appreciate a prompt determination on the requested records and a reply within 20 working days.⁵ Please e-mail copies of the requested records to the e-mail address below. If the records are not available electronically, please deliver them to the physical address below. EPA's search for—or deliberations concerning—certain records should not delay the production of others that EPA has already retrieved and elected to produce.⁶ Failure to comply within the statutory timeframe may result in Sierra Club filing an action before the relevant U.S. District Court to ensure timely receipt of the requested materials.

Deliver electronic documents to:

Zachary Fabish
zachary.fabish@sierraclub.org

and

Colin Parts
colin.parts@sierraclub.org

Deliver physical documents to:

Sierra Club Environmental Law Program
Attn: Zachary Fabish

² 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”).

³ 40 C.F.R. § 2.104 (stating that an “adverse determination” must include an identification of the documents being withheld and an explanation of the reasons for withholding, among other things).

⁴ 5 U.S.C. § 552(b).

⁵ 5 U.S.C. § 552(a)(6)(A)(i); 40 C.F.R. § 2.104.

⁶ 40 C.F.R. § 2.104 (describing response deadlines).

50 F Street, NW, Eighth Floor
Washington, D.C. 20001

FEE WAIVER REQUEST

We respectfully request that you waive all fees in connection with this request, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l).⁷

Sierra Club is the nation's oldest grassroots non-profit organization with more than 3.5 million members and supporters nationwide. Sierra Club is a leading non-governmental organization seeking to educate and mobilize the public on issues of environmental protection including climate change, fossil fuel energy, clean energy, and clean water. Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA.⁸

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to."⁹ In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."¹⁰ The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as Sierra Club access to government records without the payment of fees.¹¹

⁷ With the award-winning Sierra magazine and its extensive use of blogs to communicate with the public, Sierra Club would also be eligible for a fee waiver as a media requestor. 5 U.S.C. § 552(a)(4)(A)(ii); 40 C.F.R. § 2.107(c)(1)(iii); *see also* 40 C.F.R. § 2.107(b)(6) (defining "[r]epresentative of the news media"). A representative of the news media is "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a "non-profit public interest organization" qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public").

⁸ *See, e.g.*, FOIA Request Reference No. DOI-HQ-2017-2172 (fee letter waiver received Jan. 9, 2017); FOIA Request Reference No. DOI-HQ-2017-008402 (fee letter waiver received June 26, 2007); FOIA Request Reference No. DOI-HQ-2017-008571 & DOI-HQ-2017-008581 (fee letter waiver received June 27, 2017); FOIA Request Reference No. DOI-HQ-2017-008568 (fee letter waiver received June 28, 2017).

⁹ *U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted).

¹⁰ 5 U.S.C. § 552(a)(4)(A)(iii).

¹¹ *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984) (stating that the fee waiver provision was intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and non-profit public interest groups.").

As explained below, this FOIA request satisfies the statutory requirements for a fee waiver under FOIA as interpreted in EPA's fee waiver regulations. EPA's regulations list the following factors for determining that a request contributes to public understanding of the operations of the government: (1) the subject matter of the request, (2) the informative value of the information to be disclosed, (3) the contribution to an understanding of the subject by the public that is likely to result from the disclosure, and (4) the significance of the contribution to public understanding.¹² Further, EPA's regulations list the following factors for determining whether a request is not primarily in the commercial interest of the requester: (1) the existence and magnitude of a commercial interest, and (2) the primary interest in disclosure.¹³

1. The subject matter of the requested records specifically concerns identifiable “operations and activities of the government.”

The requested records relate to the monitoring and enforcement of the National Pollutant Discharge Elimination System (NPDES), in accordance with provisions of the Clean Water Act as promulgated by the EPA. As such, the documents concern “identifiable operations or activities of the government.”

2. The disclosure of the requested documents would be meaningfully informative and “likely to contribute to an understanding of Federal government operations or activities.”

The requested records will allow Sierra Club to convey information to the public about the status of Granite Shore Power Schiller LLC's compliance with effluent limitations mandated by the NPDES permit issued Apr. 6, 2018 (and modified March 25, 2020) and the EPA's enforcement of such requirements. Once the requested documents are made available, Sierra Club will analyze them and present its findings to its members and online activists and the general public in a manner that will meaningfully enhance the public's understanding of how the EPA is monitoring the agency-regulated activities and operations of generating facilities. Further, the requested records are not otherwise in the public domain and are not accessible other than through a FOIA request. Thus, the requested documents provide information that is not already in the public domain and are accordingly likely to meaningfully contribute to public understanding of governmental operations and priorities.

3. The disclosure would contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons.

Sierra Club has long-standing experience and expertise in the subject area of FOIA requests, including issues related to government accountability and transparency, and the activities that properly fall within the mission of the EPA.

¹² 40 C.F.R. § 2.107(l)(2).

¹³ 40 C.F.R. § 2.107(l)(3).

Sierra Club disseminates the information it receives through FOIA requests in a variety of ways, such as: analysis and distribution to the media, distribution through publication and mailing, posting on its website, e-mail and listserv distribution to our members across the U.S., and via public meetings and events. Every year the Sierra Club website receives 26,298,200 unique visits and over 30 million page views; on average, the site gets 72,049 visits per day. Sierra Magazine is a bi-monthly magazine with a printed circulation of approximately 650,000 copies. Sierra Club Insider, an electronic newsletter, is sent to nearly 3.5 million people twice a month. In addition, Sierra Club disseminates information obtained by FOIA requests through comments to administrative agencies.¹⁴

Sierra Club intends to share the information received from this FOIA request with the general public, our impacted members across the country, the media, and our allies who share a common interest in the operations of the EPA and ensuring that federal air, water, and other environmental and public health safeguards are implemented and enforced.

Sierra Club unquestionably has the “specialized knowledge” and “ability and intention” to disseminate the information requested in the broad manner outlined above, and to do so in a manner that contributes to the understanding of the “public-at-large.”

4. The disclosure would contribute “significantly” to public understanding of government operations or activities.

As discussed in section (2) above, the records requested will significantly contribute to the public understanding of governmental operations and activities. Disclosure of EPA’s enforcement of the NPDES permit, as well as communications regarding compliance with such, will significantly enhance the public’s understanding of whether the EPA is abdicating its responsibilities or advancing the agenda of polluters.

5. Sierra Club has no commercial interest that would be furthered by the requested disclosure.

Sierra Club has no commercial interest in the requested records. Nor does it have any intention to use these records in any manner that “furthers a commercial, trade, or profit interest” as those terms are commonly understood. Sierra Club is a nonprofit, tax-exempt organization

¹⁴ For example, Sierra Club publicized results of its FOIA requests regarding outside influence on foreign travel at the EPA, a story that was covered by the New York Times. Lisa Friedman, Eric Lipton and Kenneth P. Vogel, *Ex-Lobbyist for Foreign Governments Helped Plan Pruitt Trip to Australia*, The New York Times, <https://www.nytimes.com/2018/05/02/climate/epa-pruitt-australia-travel.html>. Sierra Club also publicized the results of its FOIA requests regarding agency job freezes, a story that was covered by the Washington Post. Alexander Rony, *Trump Admin Policy Leaves 700 CDC Jobs Vacant*, The Planet, <http://www.sierraclub.org/planet/2017/05/trump-admin-policies-leave-700-cdc-jobs-vacant>; Lena H. Sun, *Nearly 700 vacancies at CDC because of Trump administration’s hiring freeze*, The Washington Post, https://www.washingtonpost.com/news/to-your-health/wp/2017/05/19/nearly-700-vacancies-at-cdc-because-of-trump-administration-hiring-freeze/?utm_term=.6c2e70d8581e.

under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of Sierra Club's mission to inform the public on matters of vital importance to the environment and public health.

6. Sierra Club's primary purpose in requesting the disclosure is gathering information to interpret it and disseminate it to the public.

As discussed in Sections 2, 3, and 5, Sierra Club intends to apply its experience in gathering and interpreting information obtained from FOIA requests to keep its members and the general public informed about EPA's actions in enforcing the NPDES permit which governs the wedgewire screen at the Schiller Power Station Plant.

Sierra Club respectfully requests that EPA waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A) because the public will be the primary beneficiary of this requested information. In the event that EPA denies a fee waiver, please send a written explanation for the denial. In the event of a fee waiver denial, please do not incur expenses beyond \$200 without first contacting our office for explicit authorization. All invoices should be billed to the Sierra Club Environmental Law Program, Attn: Zachary Fabish, 50 F Street, NW, Eighth Floor, Washington, D.C. 20001.

Please e-mail zachary.fabish@sierraclub.org and colin.parts@sierraclub.org with questions regarding any aspect of this request. Thank you in advance for your assistance in this matter.

Sincerely,

_____/s/
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