

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

_____	)	
NATURAL RESOURCES DEFENSE COUNCIL,	)	
1152 15th Street NW, Suite 300	)	
Washington, DC 20005,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 18-794
v.	)	
	)	
UNITED STATES ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
1200 Pennsylvania Avenue NW	)	
Washington, DC 20460,	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. Plaintiff Natural Resources Defense Council (NRDC) brings this action to compel Defendant United States Environmental Protection Agency (EPA) to produce records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

**PARTIES**

3. Plaintiff NRDC is a national, non-profit, environmental organization. NRDC made the FOIA request at issue in this action.

4. Defendant EPA is an agency of the United States. EPA has possession or control of records responsive to NRDC’s FOIA request.

## FACTS

5. On January 5, 2018, NRDC submitted a FOIA request to EPA.
6. NRDC sought the following records in EPA's possession, custody, or control:
  - a. All communications to or from Michael Dourson, former nominee to become Assistant Administrator of the Office of Chemical Safety and Pollution Prevention, regarding methylene chloride, N-methylpyrrolidone, and/or trichloroethylene, from January 20, 2017 to the present; and
  - b. All records relating to Michael Dourson's involvement in EPA's evaluation of methylene chloride, N-methylpyrrolidone, and/or trichloroethylene, from January 20, 2017 to the present, including, but not limited to, records related to Mr. Dourson's involvement in EPA's recent decision to postpone bans on certain uses of methylene chloride, N-methylpyrrolidone, and/or trichloroethylene.
7. NRDC requested that EPA waive any fees associated with responding to the FOIA request.
8. EPA received NRDC's FOIA request on January 5, 2018, and assigned it Request No. EPA-HQ-2018-003098.
9. On January 11, 2018, EPA contacted NRDC by email and requested an opportunity to discuss a clarification of the request. NRDC responded within minutes and offered to discuss the request with EPA.
10. By letter dated January 24, 2018, EPA responded to NRDC's fee waiver request. EPA stated that because the request "does not reach the minimum billable amount," "no charges

are associated in processing your request.” EPA further stated that “[t]he Office of Chemical Safety and Pollution Prevention will be responding to your information request.”

11. On January 31, 2018, NRDC discussed the FOIA request with EPA and agreed to narrow the second part of the request to responsive records in the files of five individuals: Tala Henry, Maria Doa, Ryan Jackson, Nancy Beck, and Jeff Morris.

12. On February 23, 2018, NRDC emailed EPA and requested an update regarding the timing of EPA’s response to the request. EPA has not responded.

13. Under 5 U.S.C. § 552(a)(6)(A)(i), EPA had 20 working days to respond to NRDC’s request. More than 20 working days have passed since NRDC’s request, and EPA has neither made a determination on NRDC’s FOIA request nor produced any records in response to that request.

14. NRDC has exhausted its administrative remedies.

#### **CLAIM FOR RELIEF**

15. NRDC has a statutory right under FOIA, 5 U.S.C. § 552(a)(3)(A), to the records it requested.

16. EPA has no legal basis for refusing to produce the records responsive to NRDC’s request.

#### **PRAYER FOR RELIEF**

Wherefore, NRDC requests that this Court:

- A. Declare that EPA’s failure to provide the records responsive to NRDC’s FOIA request is unlawful;
- B. Order EPA to make the requested records available to NRDC at no charge and without delay;

- C. Order EPA to produce an index identifying any material EPA withholds and the basis for the withholdings, in the event that EPA claims that any responsive records are exempt from disclosure;
- D. Retain jurisdiction to rule on claims by EPA that any responsive records are exempt from disclosure;
- E. Award NRDC its litigation costs and reasonable attorneys' fees under 5 U.S.C. § 552(a)(4)(E); and
- F. Grant all other appropriate relief.

Dated: April 9, 2018

Respectfully submitted,

/s/ Michael T. Kirkpatrick  
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