



International Indian Treaty Council
CONSEJO INTERNACIONAL DE TRATADOS INDIOS

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March 13, 2012

Mr. Larry Gottesman, National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Ms. Dorothy R. Pullo, Freedom of Information Act Officer
U.S. Customs and Border Protection
1300 Pennsylvania Avenue, N.W.
Mint Annex
Washington, DC 20229-1181

Ms. Brenda Dolan, Freedom of Information Act Officer
U.S. Department of Commerce
Office of Management and Organization
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Mr. Gottesman, Ms. Pullo, and Ms. Dolan:

This letter constitutes a request (“Request”) pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, the Environmental Protection Agency implementing regulations, 40 C.F.R. § 2.100 *et seq.*, the Department of Homeland Security implementing regulations applicable to U.S. Customs and Border Protection, 6 C.F.R. § 5.1 *et seq.*, the Department of Commerce implementing regulations, 15 C.F.R. § 4.1 *et seq.*, the President’s Memorandum of January 21, 2009, 74 Fed. Reg. 4683 (Jan. 26, 2009), and the Attorney General’s Memorandum of March 19, 2009, 74 Fed. Reg. 49,892 (Sep. 29, 2009). This Request is submitted by the International Indian Treaty Council (“IITC”) and Advocates for Environmental Human Rights (“AEHR”).

This Request seeks records pertaining to the production and export of pesticide active ingredients and products that are banned or severely restricted in the United States. Such pesticides are also referred to as “unregistered pesticides” by the Environmental Protection Agency (“EPA”).

There is significant national and international concern regarding the production and export of pesticide active ingredients and products that are banned and severely restricted in the United States. For years, the impacts on people in the United States where facilities produce banned or severely restricted pesticides and the impacts on people in foreign countries where these pesticides are exported have been the focus of extensive media coverage and policy debates.

Testimonies presented by Indigenous communities in the United States, Mexico, Guatemala, Columbia, Ecuador, and other countries document the use of banned pesticides without precautionary measures or protective gear, including aerial spraying of fields with workers and families present, as well as communities, homes, and schools. Severe birth defects, childhood leukemia, and children born with tumors are among the most severe and rapidly increasing effects reported.

Furthermore, the United Nations Special Rapporteur on Toxics declared the legal authorization of exporting banned and severely restricted pesticides to foreign countries to be “immoral” because of the disregard shown for the harmful consequences on human health and the environment. David Pellow, *Resisting Global Toxics: Transnational Movements for Environmental Justice*, p. 156 (2007). IITC joined more than 20 Indigenous Peoples organizations to formally petition the United Nations Working Group on Indigenous Populations to investigate the human rights impacts of such exports. Joint Statement by the International Indian Treaty Council *et alia* to the United Nations Working Group on Indigenous Populations, July – August 2006. The International Journal of Occupational and Environmental Health noted that between 1996 and 2000, the United States exported nearly 1.1 billion pounds of pesticides that have been identified as known or suspected carcinogens, an average rate of almost 16 tons per hour. Carl Smith, *Pesticide Exports from U.S. Ports, 1997-2000*, INTERNATIONAL JOURNAL OF OCCUPATIONAL AND ENVIRONMENTAL HEALTH, Oct.-Dec. 2001, p. 270. Most of these exports are sent to the developing world and used in agriculture. *Id.* According to the International Labor Organization, 65 to 90 percent of the children estimated to be working in Africa (80 million), Asia (152 million) and Latin America (17 million) are working in agriculture. *Id.* These children are often continuously exposed to pesticides sprayed in fields, drift into water, penetrate their clothing, and contaminate their homes. More recently, the Pesticide Action Network analyzed the wide-ranging health impacts of pesticide use on a global scale in the report *Communities in Peril: Global Report on Health Impacts of Pesticide Use in Agriculture* (2010).

Notwithstanding this significant public concern, there is no publicly available and accessible information regarding the environmental justice and human health impacts of the production of banned and severely restricted pesticide active ingredients and products for export from the United States. The purpose of this Request is to obtain information that will be used to raise public awareness about these impacts in relation to the operations of the Environmental Protection Agency, U.S. Customs and Border Protection, and the Department of Commerce pertaining to the production and export of banned and severely restricted pesticide active ingredients and products.

Specifically, we seek information regarding the:

- identities of the producers and the locations of their facilities in the United States that produce for export any banned or severely restricted pesticide active ingredient or product;

- quantities of banned or severely restricted pesticide active ingredients and products that are produced for export by facilities in the United States and the period of time during which the production took place;
- chemical names or CAS registry numbers of banned or severely restricted pesticide active ingredients and products that are produced for export by facilities in the United States;
- environmental releases to the air, water, and land by facilities in the United States that produce for export banned or severely restricted pesticide active ingredients and products;
- notifications provided by the Environmental Protection Agency to Designated National Authorities in foreign countries receiving exported pesticide active ingredients and products that are banned or severely restricted in the United States, which identify the foreign purchaser of the unregistered pesticide, the particular unregistered pesticide product, and the exporter; and
- human health, environmental, and/or occupational safety studies considered in the promulgation of laws, regulations, and policies that govern the operations of the Environmental Protection Agency, U.S. Customs and Border Protection, and the Department of Commerce pertaining to the export of banned and severely restricted pesticide active ingredients and products.

This Request does not seek information that is restricted from disclosure pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136h.

We request a waiver of search, review, and duplication fees on the grounds that the disclosure of the requested records 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.” 5 U.S.C. § 552(a)(4)(A)(iii). Given the ongoing and widespread public attention to this issue, the records sought in this Request will contribute significantly to public understanding of the operations of the Environmental Protection Agency, U.S. Customs and Border Protection, and the Department of Commerce. Moreover, disclosure is not in the commercial interest of the IITC or AEHR. Any information disclosed by the IITC and AEHR as a result of this Request will be available to the public at no cost. Both IITC and AEHR have a demonstrable record of providing to the public at no cost a wide range of information regarding environmental justice and environmental health issues. For several years, IITC has prepared reports, newsletters, and news releases, as well as participated in media interviews that raise public awareness about specific aspects of the environmental justice and human health issues pertaining to pesticide production, export, and use. Thus, a fee waiver would fulfill the legislative intent of Congress in amending the Freedom of Information Act. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” (citation omitted)).

The requested information will be analyzed and disseminated by the IITC and AEHR for the public benefit of raising public awareness and knowledge of the environmental justice and human health impacts of producing banned and severely restricted pesticide active ingredients

and products for export to foreign countries vis-à-vis the operations of the Environmental Protection Agency, U.S. Customs and Border Protection, and the Department of Commerce.

If this Request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions to FOIA. We expect the release of segregable portions of otherwise exempt materials. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Thank you for your prompt attention to this matter. Please furnish all applicable records to:

Mark Anquoe, Administrative Coordinator
International Indian Treaty Council
2940 16th Street, Suite 305
San Francisco, CA 94103-3688

Sincerely,



Andrea Carmen, Executive Director
International Indian Treaty Council



Monique Harden, Co-Director/Attorney
Advocates for Environmental Human Rights