

June 8, 2011

Attn: Freedom of Information Act Officer  
United States Department of Energy  
1000 Independence Avenue, SW  
Washington, DC 20585

Re: **Freedom of Information Act Request**

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and corresponding U.S. Department of Energy regulations, 21 C.F.R. Part 1004, the Environmental Working Group requests copies of the following records<sup>1</sup> located within DOE:

- (1) All correspondence and communications among DOE, U.S. Environmental Protection Agency, U.S. Department of Interior, U.S. House of Representatives, U.S. Senate, and White House staff from May 1, 2010, to the present, regarding the creation, composition, and implementation of the Natural Gas subcommittee of the Secretary of Energy Advisory Board, including, but not limited to, records that reference or discuss criteria used to select individual members and/or conflict of interest considerations;
- (2) All correspondence and communications among DOE staff and state government officials from May 1, 2010, to the present, regarding the creation, composition, and implementation of the Natural Gas subcommittee of the Secretary of Energy Advisory Board;
- (3) All correspondence and communications among DOE staff and energy companies, including their representatives and respective trade associations, from May 1, 2010, to the present, regarding the creation, composition, and implementation of the Natural Gas subcommittee of the Secretary of Energy Advisory Board; and
- (4) All correspondence and communications from May 1, 2010, to the present, listing the names of prospective members of the Natural Gas subcommittee of the Secretary of Energy Advisory Board, regardless of whether they were selected for the subcommittee.

EWG respectfully requests that DOE make every reasonable effort to provide the requested

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<sup>1</sup> For purposes of this FOIA request, “records” means information of any kind, including writings, memoranda, e-mails, text messages, letters, notes, meeting requests, calendar entries, meeting minutes, documents, drawings, graphs, charts, photographs, electronic and magnetic meeting recordings, records of telephone conversations, including cell phone records, and any other compilation of data from which information can be obtained.

records within the 20-day limit required by DOE regulations, 21 C.F.R. § 1004.5(d). Copies should be mailed within 20 days of receipt of this letter to:

Dusty Horwitt, Senior Counsel  
Environmental Working Group  
1436 U Street NW, Suite 100  
Washington, DC 20009

Should you determine that portions of the requested records are exempt from disclosure under FOIA, please segregate those portions and mail the remaining records within the statutory time limit. For any records or portions of records that you determine to be exempt, please provide a specific description of the record or portion of the record exempted along with a particularized description of the exemption.

The Environmental Working Group is a non-profit, public interest organization dedicated to using the power of information to protect health and the environment. As part of that mission, EWG has spent a number of years studying and reporting on the health risks associated with a virtually unprecedented increase in U.S. oil and gas drilling. Of particular concern is a process used by industry known as hydraulic fracturing, or “fracking.” Energy companies engaged in fracking inject water often laced with toxic chemicals under high pressure to break open rock formations, allowing natural gas and/or oil to flow upward into the drilling pipe. Although this technology may contribute to U.S. energy independence, EWG remains deeply concerned with the question of “**at what cost to public health?**”

Despite industry claims that fracking is safe, a recent EWG investigation of chemical disclosure records revealed that companies are injecting millions of gallons of fluids into the ground that contain “petroleum distillates that can be similar to diesel and represent an equal or greater threat to water supplies.”<sup>2</sup> In fact, many of these distillates contain highly toxic chemicals such as benzene, toluene, ethylbenzene, and xylene.<sup>3</sup> Short-term exposures to some of these chemicals can lead to temporary nervous system disorders, nausea, and fatigue.<sup>4</sup> More long-term exposures can cause serious health effects such liver and kidney damage, tremors, speech impairment, and cancer, even at low concentrations.<sup>5</sup> Despite the risks posed by chemicals used in fracking fluid, companies such as Halliburton, Schlumberger Ltd., and B.J. Services Co., remain myopically focused on their ability to exploit U.S. energy reserves – even if they end up putting communities in harm’s way. It is against this backdrop that EWG seeks DOE records related to the creation, composition, and implementation of the Natural Gas subcommittee of the Secretary of Energy Advisory Board (subcommittee).

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<sup>2</sup> Dusty Horwitt, EWG, Drilling Around the Law 2 (2011), <http://www.ewg.org/dillingaroundthelaw> [hereinafter EWG Fracking Report].

<sup>3</sup> Id.

<sup>4</sup> Id. at 11.

<sup>5</sup> Id.

On March 30, 2011, President Barack Obama announced plans for achieving U.S. energy security. He called on Secretary of Energy Steven Chu to work with federal “agencies, the natural gas industry, states, and environmental experts to improve the safety” of natural gas extraction.<sup>6</sup> Secretary Chu responded to the president’s charge on May 5, 2011, by announcing the creation of the subcommittee.<sup>7</sup> According to Secretary Chu, the subcommittee’s goal is to “provide recommendations from a range of **independent** experts . . . in consultation with the EPA Administrator and Secretary of Interior” on how to “improve the safety and environmental performance of fracking.”<sup>8</sup> Secretary Chu also underscored the subcommittee’s need to “solicit **public input** on the subject” when developing its recommendations.<sup>9</sup>

Despite Secretary Chu’s stated commitment to establishing an independent fracking review, DOE has already compromised that aim by stacking the subcommittee with individuals who have significant financial interests in concluding that fracking is safe. EWG has summarized the following information about several of the members:

- **John Deutch.** The subcommittee chair, a former director of the Central Intelligence Agency, currently serves on the board of Cheniere Energy, Inc., a Houston-based liquefied natural gas company that paid Deutch about \$882,000 from 2006 through 2009.<sup>10</sup> During a decade-long tenure on the board of Schlumberger Ltd., one of the world’s three largest hydraulic fracturing companies, Deutch also received about \$563,000 in 2006 and 2007, according to Forbes.<sup>11</sup>
- **Stephen Holditch.** Holditch is the head of the petroleum engineering department at Texas A&M University and a leader in the field of hydraulic fracturing designs. Holditch worked previously at Shell Oil and later as the head of his own firm, acquired by Schlumberger in 1997. Today, he is engineering committee chairman at Matador Resources, a Dallas oil and gas exploration company and is on the board of directors of Triangle Petroleum Corporation, a Denver-based oil and gas exploration and production company which has paid him more than \$1.7 million between 2006 and 2010, according to Forbes.<sup>12</sup>
- **Mark Zoback.** Zoback is a geophysics professor at Stanford and senior advisor to Baker Hughes, Inc., a Houston-based oilfield services company engaged in hydraulic

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<sup>6</sup> Press Release, White House Office of Press Secretary, Remarks by the President on America’s Energy Security (Mar. 30, 2011), <http://www.whitehouse.gov/the-press-office/2011/03/30/remarks-president-americas-energy-security> [hereinafter President’s Energy Remarks].

<sup>7</sup> Memorandum from Steven Chu, Secretary, DOE, to William J. Perry, Chairman, Sec’y of Energy Advisory Bd. 1 (May 5, 2011), [www.energy.gov/news/documents/Fracking\\_subcommittee\\_charge.pdf](http://www.energy.gov/news/documents/Fracking_subcommittee_charge.pdf) [hereinafter DOE Memo].

<sup>8</sup> *Id.* (emphasis added).

<sup>9</sup> *Id.* at 2 (emphasis added).

<sup>10</sup> Forbes Profile for John M. Deutch, <http://people.forbes.com/profile/john-m-deutch/18048> (last visited June 6, 2011).

<sup>11</sup> *Id.*

<sup>12</sup> Matador Resources Board of Directors, <http://www.matadorresources.com/board.html> (last visited June 6, 2011); see also Forbes Profile for Stephen A. Holditch, <http://people.forbes.com/profile/stephen-a-holditch/81092> (last visited June 8, 2011).

fracturing.<sup>13</sup> Zoback also is the chair of GeoMechanics International, a consulting firm that advises on various oil and gas drilling problems, acquired by Baker Hughes in 2008.<sup>14</sup>

- **Kathleen McGinty.** McGinty was the chair of the White House Council on Environmental Quality during the Clinton administration and a former secretary of the Pennsylvania Department of Environmental Protection. McGinty is currently the senior vice president of Weston Solutions, Inc., which consults for the oil and gas industry, including a leading natural gas driller, Chesapeake Energy. She also is a director of NRG Energy, a Princeton, N.J., wholesale power generation company whose assets include more than two dozen natural gas power companies.<sup>15</sup> Forbes reported that NRG Energy paid McGinty more than \$500,000 from 2008 to 2010.<sup>16</sup>
- **Susan Tierney.** Tierney was the assistant secretary for policy at DOE under President Clinton and is now the managing principal of Analysis Group, which consults for utilities that use natural gas, and for the Interstate Natural Gas Association of America, the natural gas pipeline industry association.<sup>17</sup>
- **Daniel Yergin.** Yergin is the Pulitzer-Prize winning author of *The Prize*, a 1991 book about the oil industry, and co-founder, chairman, and executive vice president of IHS CERA, originally called Cambridge Energy Research Associates, acquired in 2004 by IHS, an international consulting firm whose clients include the oil, natural gas, coal, power, and clean energy communities.<sup>18</sup> He earned \$12.7 million from IHS in 2010 alone, according to Forbes.<sup>19</sup>

In light of these affiliations, which inherently undermine Secretary Chu's objective of creating an independent panel, EWG seeks records consistent with the purposes of the FOIA, namely "the

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<sup>13</sup> Committee Membership Information, <http://www8.nationalacademies.org/cp/committeevue.aspx?key=49246> (last visited June 6, 2011); see also Hydraulic Fracturing, <http://www.bakerhughes.com/products-and-services/reservoir-development-services/software/hydraulic-fracturing> (last visited June 6, 2011).

<sup>14</sup> Geomechanics International Executive Bios, <http://www.geomi.com/AboutUs/ExecBios.php> (last visited June 6, 2011).

<sup>15</sup> Weston Solutions Company Officers and Directors, <http://www.westonsolutions.com/about/officers.htm> (last visited June 6, 2011); Energy Companies Searching for Natural Gas, Canton Repository, Apr. 22, 2011, <http://www.cantonrep.com/news/x1146468142/Energy-companies-searching-for-natural-gas>; NRG Energy Biography for Kathleen A. McGinty, <http://phx.corporate-ir.net/phoenix.zhtml?c=121544&p=irol-govBio&ID=184475> (last visited June 6, 2011); see also NRG Energy, Generation Assets (Nov. 17, 2010), <http://www.nrgenergy.com/pdf/Projectlist.pdf>.

<sup>16</sup> Forbes Profile for Kathleen McGinty, <http://people.forbes.com/profile/kathleen-mcginty/122082> (last visited June 8, 2011).

<sup>17</sup> Analysis Group Profile for Susan F. Tierney, [http://www.analysisgroup.com/susan\\_tierney.aspx](http://www.analysisgroup.com/susan_tierney.aspx) (last visited June 6, 2011); see also Interstate Natural Gas Association of America, <http://www.ingaa.org/> (last visited June 6, 2011).

<sup>18</sup> IHS Executive Management, <http://www.ihs.com/about/executives.aspx> (last visited June 6, 2011); see also Press Release, IHS, Energy Acquires Cambridge Energy Research Associates (CERA) (Sept. 1, 2004), <http://press.ihs.com/press-release/corporate-financial/ihs-energy-acquires-cambridge-energy-research-associates-cera>.

<sup>19</sup> Forbes Profile for Daniel Yergin, <http://people.forbes.com/profile/daniel-yergin/42826> (last visited June 8, 2011).

citizens' right to be informed about 'what their government is up to.'" U.S. Dept. Justice v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772 (1989). EWG also seeks a fee waiver for this request because "disclosure . . . is likely to contribute significantly to public understanding of the operations or activities of the government and disclosure is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); see also 10 C.F.R. § 1004.9(a)(8). This request fits squarely into the factors outlined in the U.S. Department of Justice's FOIA guide to determine whether fee waivers are appropriate. See U.S. Dept. Justice, Freedom of Information Act Guide (May 2004), <http://www.usdoj.gov/oip/fees.htm#walver> [hereinafter DOJ FOIA Guide].

The subject matter of the requested records sheds light on how DOE is implementing President Obama's *Blueprint for a Secure Energy Future* (Energy Blueprint) for achieving affordable energy while also ensuring adequate protection for public health and the environment.<sup>20</sup> Central to this policy debate is the question of how industry can "improve the safety . . . of shale gas extraction processes," including fracking.<sup>21</sup> That is why Secretary Chu established the subcommittee to review fracking safety, asking members to "give [their assignment] the highest priority."<sup>22</sup> Given the potential impact of any recommendations by the subcommittee, EWG believes that the process used to select individual members matters just as much as the substance of their findings.

In particular, EWG seeks these records for their informative value to evaluate: (1) how DOE determined the subcommittee's composition, including the extent to which DOE consulted with EPA and the Interior department, as envisioned by President Obama; (2) whether DOE accounted for the conflict of interests held by individual members of the subcommittee; (3) whether DOE implemented safeguards to ensure that members will carry out the subcommittee's responsibilities in an objective manner; (4) whether industry pressured DOE to select some candidates over others given its interest in concluding that fracking is safe; (5) whether DOE considered the fact that EPA already is conducting its own fracking safety review; and finally, (6) **why DOE selected six industry representatives to join the subcommittee while denying membership to citizens already facing fracking's impact on environmental health.** Accordingly, the subject matter of the requested records clearly concerns "identifiable 'operations or activities of the government.'" DOJ FOIA Guide (DOJ fee waiver factor No. 1).

The requested records are "likely to contribute" to an understanding of how DOE created the subcommittee – and whether DOE intends to give meaningful attention to fracking health concerns – because the documents may expose inadequate procedures used to ensure the subcommittee's independence, and they are not otherwise in the public domain. Moreover, complete records of communications and meetings among DOE and oil and gas industry representatives generally are not accessible through means other than a FOIA request. The requested documents are "meaningfully informative" with regard to understanding the actions of Secretary Chu, or members of his staff, in response to efforts to implement President Obama's

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<sup>20</sup> DOE Memo at 1; see also President's Energy Remarks.

<sup>21</sup> DOE Memo at 2.

<sup>22</sup> Id. at 1.

Energy Blueprint, which again, asks DOE, EPA, and Interior to set the “bar for safety” when it comes to fracking.<sup>23</sup> To the extent that the subcommittee’s independence is compromised as a result of DOE’s membership selection, the public has a right to know. DOJ FOIA Guide (DOJ fee waiver factor No. 2).

Disclosure of the requested documents will unquestionably contribute to the understanding of the “public at large,” as opposed to that of a narrow segment of the population. The **geographic footprint of the nation’s fracking boom encompasses thousands of communities**, in states as diverse as Colorado, Ohio, North Carolina, Pennsylvania, Virginia, and West Virginia. **The stakes for public health are high, should the Obama administration reach the wrong conclusion about fracking safety.** That is why EWG has given so much attention to fracking.

EWG routinely disseminates the information it receives through FOIA regarding government operations and activities through the analyses and media releases, as well as by direct distribution through mailings, posting on EWG’s website, and e-mailing the organization’s million-strong supporters and other like-minded parties throughout the United States. EWG also disseminates information to the public through Congressional testimony, comments to federal agencies, and, where necessary, through the judicial system. As for EWG’s capacity to disseminate the information, we unquestionably have the “specialized knowledge,” “ability and intention” to share the requested information in the broad manner outlined above and do so in a manner that contributes to the understanding of the public at large.<sup>24</sup> Consequently, EWG has undoubtedly demonstrated that the information sought in this request will contribute to the understanding of the public at large. DOJ FOIA Guide (DOJ fee waiver factor No. 3).

Disclosure of the requested records will contribute “significantly” to the public’s understanding of how DOE established the subcommittee and how the subcommittee’s recommendations may shape future energy policy. We hope the records specifically identified by this request will answer the questions already identified herein, which are of great importance to communities nationwide. If the public is to trust regulators to make decisions about the safety of fracking, then it has a right to know whether the subcommittee can give meaningful advice in light of these obvious conflicts of interest. DOJ FOIA Guide (DOJ fee waiver factor No. 4).

Finally, the disclosure of this information is purely noncommercial. EWG has no intention of using this information in a manner that “furthers a commercial, trade, or profit interest as those terms are commonly understood.” See DOJ FOIA Guide. Any publication of any analysis of the requested information would be for the sole purpose of dissemination to the public to educate how DOE is working with various stakeholders to review the safety of existing fracking practices. Id. (DOJ commercial interest factor).

For all of these reasons, disclosure of the requested records will not only significantly contribute to public understanding of government activities related to shaping U.S. energy policy, but also

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<sup>23</sup> Id.

<sup>24</sup> E.g., EWG Fracking Report; see also Dusty Horwitt, Senior Counsel, EWG, Testimony Before the New York City City Council (Oct. 2009), [http://www.ewg.org/natural\\_gas\\_drilling\\_new\\_york](http://www.ewg.org/natural_gas_drilling_new_york).

contribute to purely non-commercial interests held by EWG. If the DOE cannot grant a fee waiver, EWG is willing pay up to \$100 so that the DOE may conduct the requested search in a timely fashion. In any event, the request for a fee waiver should not be construed an extension of time in which to reply to this FOIA request.

Thank you for your consideration. If you require further clarification about this FOIA request or anticipate any problems with releasing the requested documents, please contact us at (202) 667-6982.

Sincerely,

A handwritten signature in black ink that reads "Dusty Horwitt". The signature is written in a cursive, slightly slanted style.

Dusty Horwitt  
Senior Counsel  
Environmental Working Group

A handwritten signature in black ink that reads "Thomas Cluderay". The signature is written in a cursive, slightly slanted style.

Thomas Cluderay  
Staff Attorney  
Environmental Working Group