

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 13-1751 (ADM/TNL)

AMERICAN FARM BUREAU
FEDERATION, and NATIONAL PORK
PRODUCERS COUNCIL

Plaintiffs,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY, and GINA McCARTHY,¹
Administrator U.S. Environmental Protection
Agency,

Defendants,

and

FOOD & WATER WATCH,
ENVIRONMENTAL INTEGRITY
PROJECT, AND IOWA CITIZENS FOR
COMMUNITY IMPROVEMENT,

Intervenors.

**STIPULATION OF SETTLEMENT
AND DISMISSAL**

WHEREAS, on July 5, 2013, Plaintiffs, the American Farm Bureau Federation (“AFBF”) and National Pork Producers Council (“NPPC”) (together, “Plaintiffs”), filed their Complaint for Declaratory and Injunctive Relief (“Complaint”), alleging a claim under the Administrative Procedure Act and seeking an Order enjoining the U.S.

¹ Scott Pruitt is now the Administrator of EPA. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Mr. Pruitt should be substituted for Gina McCarthy as defendant in this suit.

Environmental Protection Agency (“EPA”) from disclosing certain information (referred to herein as the “disputed information”) in response to Freedom of Information Act (“FOIA”) requests submitted by Earthjustice (EPA-HQ-2012-001337) and the Natural Resources Defense Council and the Pew Charitable Trusts (EPA-HQ-2013-001516).

WHEREAS, the disputed information consists of a set of 73 documents (“disputed information”) that EPA collected from twenty-seven state permitting authorities, eight state websites, EPA databases, and EPA regional offices, following the Agency’s determination to compile reliable information about concentrated animal feeding operations (“CAFOs”) in the United States using existing data sources rather than promulgating a rule requiring CAFOs to submit information directly to EPA.

WHEREAS, in this lawsuit, Plaintiffs allege that portions of the disputed information are protected by Exemption 6 of the FOIA, which pertains to “[p]ersonnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6).

WHEREAS, the disputed information consists of data pertaining to animal feeding operations, which is aggregated by state, for the following states: Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming.

WHEREAS, the disputed information was filed in the administrative record in this matter, at ECF. No. 69, Exhibits 16 and 32.

WHEREAS, Plaintiffs, AFBF and NPPC, and Defendants, Administrator Scott Pruitt and EPA, wish to avoid any further litigation and controversy and to settle and

compromise fully any and all claims and issues that have been raised, or could have been raised in this action, which have transpired prior to the execution of this Stipulation of Settlement and Dismissal (“Stipulation”).

Now, therefore, the parties, by and through their respective counsel, hereby settle and compromise the above-captioned lawsuit. The parties stipulate that this matter is hereby settled and compromised on the following terms:

1. Defendants agree that only the columns reflecting permit status, city, county, and 5-digit zip code in the disputed information, which, as defined above, consists of 73 documents set forth at ECF No. 69, Exhibits 16 and 32, will be released in response to the FOIAs requests at issue in this case, EPA-HQ-2012-001337 and EPA-HQ-2013-001516. All other columns and fields in the disputed information will be redacted pursuant to 5 U.S.C. § 552(b)(6).

2. Defendants have provided, and Plaintiffs have reviewed, the disputed information with the agreed-upon redactions, and those redactions are attached hereto as Exhibit A.

3. Defendants also agree to release the same redacted disputed information, as set forth in Exhibit A, in response to the following pending FOIA requests submitted to EPA Headquarters that seek the disputed information: (1) EPA-HQ-2013-006737; (2) EPA-HQ-2013-006604; (3) EPA-HQ-2013-004128; (4) EPA-HQ-2013-008906; (5) EPA-HQ-2013-007430; (6) EPA-HQ-2013-006913; (7) EPA-HQ-2013-004097; (8) EPA-HQ-2015-004064; (9) EPA-HQ-2015-006732; and (10) EPA-HQ-2016-008563. Defendants further agree to post the redacted disputed information, responsive to the

FOIA requests identified in Paragraphs 1 and 3, to FOIAonline (www.FOIAonline.regulations.gov), consistent with 5 U.S.C. § 552(a)(2)(D).

4. Within 7 calendar days of the execution of this Stipulation, Defendants will provide the redacted disputed information, set forth at Exhibit A, in response to the FOIA requests identified in Paragraphs 1 and 3 above.

5. Within 7 calendar days of the execution of this Stipulation, Defendants will request in writing that the FOIA requesters in EPA-HQ-2012-001337 and EPA-HQ-2013-001516 return to EPA or destroy all copies of any previous responses to those FOIA requests and cease any further or ongoing dissemination of the same.

6. This Stipulation does not bind Defendants with respect to its response to any FOIA request other than the FOIA requests identified in Paragraphs 1 and 3 of this Stipulation. Within 7 calendar days of execution of this Stipulation, Defendants agree to provide written instruction to EPA's Regional and Headquarters FOIA coordinators that if they receive a FOIA request seeking the disputed information, as defined above, they are to respond by referring the requester(s) to FOIAonline and referencing the response provided to EPA-HQ-2012-001337 and EPA-HQ-2013-001516. This instruction will also be included in the training described below in paragraph 7.

7. Defendants agree to conduct training for managers in EPA's Office of Water and Regional and Headquarters FOIA coordinators regarding the Agency's obligations under the FOIA and the Privacy Act. Among other things, the training will focus on Exemption 6 of the FOIA, the Privacy Act, and other relevant privacy issues. The training will be conducted in the 2017 calendar year.

8. Plaintiffs agree to dismiss this lawsuit with prejudice. Such dismissal shall be effected via the stipulation of voluntary dismissal with prejudice per Fed. R. Civ. P. 41(a)(1)(A)(ii) that is attached hereto as Exhibit B. The parties shall file with the Court such stipulation of dismissal within ten business days of execution of this Stipulation.

9. This Stipulation constitutes the full and complete satisfaction of any and all claims on behalf of Plaintiffs arising from (a) the allegations set forth in the complaint filed in this lawsuit and (b) any litigation or administrative proceeding that Plaintiffs have brought, could bring, or could have brought against Defendants regarding the specific FOIA requests identified in Paragraphs 1 and 3 of this Stipulation, including all claims for attorneys' fees and costs. Any and all remaining claims and issues in this litigation are released and waived by all parties.

10. This Stipulation does not constitute an admission of liability or fault on the part of Defendants, the EPA, or its agents, servants, or employees, and this Stipulation shall not be construed as an admission of liability or fault. This Stipulation is entered into by both parties for the sole purpose of compromising disputed claims and avoiding the expenses and risks of further litigation. This Stipulation will not be used in any manner to establish liability for fees, amounts, or hourly rates, in any other case or proceeding.

11. This Stipulation is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns.

12. Each party will bear its own attorney's fees and costs.

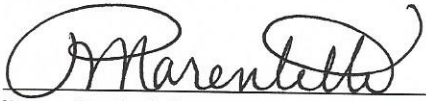
13. The undersigned attorneys are authorized to enter into this Stipulation of Settlement on behalf of their respective clients.

14. This Stipulation may be executed in counterparts as if executed by both parties on the same document.

[Signatures next page]

U.S. ENVIRONMENTAL PROTECTION AGENCY &
E. SCOTT PRUITT, ADMINISTRATOR

GREGORY G. BROOKER
Acting United States Attorney
District of Minnesota

BY:  DATE: March 23, 2017
Pamela A. Marentette
Assistant United States Attorney

AMERICAN FARM BUREAU FEDERATION

BY: _____ DATE: _____
Ellen Steen,
General Counsel & Secretary

NATIONAL PORK PRODUCERS COUNCIL

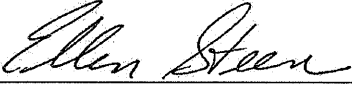
BY: _____ DATE: _____
Michael Formica,
Assistant Vice President & Counsel, Domestic Policy

U.S. ENVIRONMENTAL PROTECTION AGENCY &
E. SCOTT PRUITT, ADMINISTRATOR

GREGORY G. BROOKER
Acting United States Attorney
District of Minnesota

BY: _____ DATE: _____
Pamela A. Marentette
Assistant United States Attorney

AMERICAN FARM BUREAU FEDERATION

BY:  DATE: March 23, 2017
Ellen Steen,
General Counsel & Secretary

NATIONAL PORK PRODUCERS COUNCIL

BY: _____ DATE: _____
Michael Formica,
Assistant Vice President & Counsel, Domestic Policy

U.S. ENVIRONMENTAL PROTECTION AGENCY &
E. SCOTT PRUITT, ADMINISTRATOR

GREGORY G. BROOKER
Acting United States Attorney
District of Minnesota

BY: _____ DATE: _____
Pamela A. Marentette
Assistant United States Attorney

AMERICAN FARM BUREAU FEDERATION

BY: _____ DATE: _____
Ellen Steen,
General Counsel & Secretary

NATIONAL PORK PRODUCERS COUNCIL

BY: Michael Formica _____ DATE: 3/23/2017
Michael Formica,
Assistant Vice President & Counsel, Domestic Policy