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October 2, 2019

Via Overnight Delivery and FOIAonline.gov

National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania NW, (2310A)
Washington, DC 20460

RE: Freedom of Information Act Request

To Whom It May Concern:

On September 18, 2019, during a visit to San Francisco, President Trump issued a threat to the City along the lines of "And we're going to be giving San Francisco, they're in total violation, we're going to be giving them a notice very soon. ... EPA is going to be putting out a notice ... They're in serious violation."¹ This was followed in short order by a September 26, 2019 letter from U.S. Environmental Protection Agency (EPA) Administrator Wheeler to Governor Newsom that alleged San Francisco was in violation of the Clean Water Act (CWA) based upon numerous mischaracterizations and inaccuracies about the operation and performance of San Francisco's combined sewer system. And then, today, implementing its marching orders handed down from the President, the EPA issued a Notice of Violation to San Francisco alleging CWA violations.

Given this timeline, and the misinformation reflected in the President's statements about San Francisco and in Administrator Wheeler's letter to the Governor, it certainly appears as if the President is directing EPA – with its nearly \$9 billion annual budget and 14,000 strong workforce – to pursue enforcement actions for the purpose of harassing San Franciscans and scoring political points. If this is the case, it would represent a disturbing departure from long-held norms at EPA that have separated the targeting and pursuit of enforcement actions against specific parties from political interference and pressure. Surely EPA will agree that the public has a right-to-know that EPA is not misusing taxpayer funds to pursue a political agenda via inappropriate direction of the Agency's substantial enforcement resources. Therefore, I write on behalf of the City and County of San Francisco and its taxpayers to request the disclosure of relevant records about the matters described below in accordance with the Freedom of Information Act, 5 U.S.C. § 552 and 40 C.F.R. Part 2.

Description of Records Sought

For the purposes of this request, the term "COMMUNICATIONS" includes, but is not be limited to: letters, e-mails, e-mail attachments, SMS or other instant text messages, memoranda, briefing documents, PowerPoint presentations, agendas, voice-mails, tweets, Skype messages, Slack communications, Facebook messages, press

¹ Hernandez, Lauren, *Trump's Bizarre SF Attack: Says Needles Flowing to Ocean – But That's Unlikely, Experts Say*, San Francisco Chronicle (Sept. 19, 2019) (available at: <https://www.sfchronicle.com/bayarea/article/Trump-threatens-to-cite-San-Francisco-says-city-14451275.php>).

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releases, message or communication logs, and written intra-office and inter-office communications of any kind. COMMUNICATIONS extends to an official communication, whether made on an EPA computer or device or on a privately owned computer or device.

Please provide the following records in response to this FOIA request:

1. All COMMUNICATIONS or other documents prepared, sent, or received by, or copied to, any of the individuals listed in Section 13 below between July 1, 2019 and October 2, 2019, concerning the statement made by President Trump to the press pool on or near Air Force One on September 18, 2019, along the lines of "And we're going to be giving San Francisco, they're in total violation, we're going to be giving them a notice very soon. ... EPA is going to be putting out a notice ... They're in serious violation."
2. All COMMUNICATIONS or other documents prepared, sent, or received by, or copied to, any of the individuals listed in Section 13 below between July 1, 2019 and October 2, 2019, discussing or otherwise addressing the discharge of needles to the San Francisco Bay or the Pacific Ocean.
3. All COMMUNICATIONS or other documents copying, discussing, or referencing the August 1, 2018 NPR article *San Francisco Squalor: City Street Strewn with Trash, Needles and Human Feces* and prepared, sent, or received by, or copied to, any of the individuals listed in Section 13 below.
4. All COMMUNICATIONS or other documents prepared, sent, or received by, or copied to, any of the individuals listed in Section 13 below between July 1, 2019 and October 2, 2019, concerning the issuance of a Notice of Violation to the City and County of San Francisco (and/or the San Francisco Public Utilities Commission) for any alleged violation of the Clean Water Act.
5. Any COMMUNICATIONS or other documents prepared, sent, or received by, or copied to, or used by any of the individuals listed in Section 13 below (including used by third-parties to brief an individual in Section 13) between July 1, 2019 and October 2, 2019, describing or characterizing the City and County of San Francisco's combined sewer system in any way.
6. All COMMUNICATIONS or other documents prepared, sent, or received by, or copied to, any of the individuals listed in Section 13 below between July 1, 2019 and October 2, 2019, concerning the September 26, 2019 press release titled "EPA Administrator Wheeler calls out California's Environmental Protection Failure."
7. All drafts of the September 26, 2019 press release that was issued on September 26, 2019 and, in final form, was titled "EPA Administrator Wheeler calls out California's Environmental Protection Failure."
8. All COMMUNICATIONS or other documents prepared, sent, or received by, or copied to, any of the individuals listed in Section 13 below between July 1, 2019 and October 2, 2019, concerning the September 26, 2019 letter sent by Administrator Wheeler to Governor Gavin Newsom of California.
9. All drafts of the September 26, 2019 letter from Administrator Wheeler to Governor Gavin Newsom of California.
10. The Internet browsing history for September 22, 2019 from each of the desktop and/or laptop EPA computers used by any of the individuals listed in Section 13 below. To the extent multiple Internet browsers are installed on each relevant computer (e.g., Google Chrome, Internet Explorer, etc.), this request

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seeks a copy of each application's browsing history. To the extent that there is no recorded activity on September 22, 2019, this request seeks a copy showing that the browsing history for that date is blank.

11. All scheduling documents related to meetings, calls, conference calls, created between July 1, 2019 and October 2, 2019 – in electronic or paper form – that were prepared, sent, or received by, or copied to, or used by any of the individuals listed in Section 13 and relating to or discussing any of the following:

- 11.1. The statement made by President Trump to the press pool on Air Force One on September 18, 2019, along the lines of “And we’re going to be giving San Francisco, they’re in total violation, we’re going to be giving them a notice very soon. ... EPA is going to be putting out a notice ... They’re in serious violation.”
- 11.2. The September 26, 2019 press release titled “EPA Administrator Wheeler calls out California’s Environmental Protection Failure.”
- 11.3. The September 26, 2019 letter sent by Administrator Wheeler to Governor Gavin Newsom of California.
- 11.4. The issuance of the October 2, 2019 “Notice of Violation of National Pollutant Discharge Elimination Systems permits” to the San Francisco Public Utilities Commission.
- 11.5. The City and County of San Francisco’s Combined Sewer System.
- 11.6. For the purpose of Section 12, responsive documents shall include, but not be limited to, calendars, meeting invitations, schedules, emails, and itineraries for those individuals listed in Section 13 that list or account for meetings, whereabouts or travels when conducting government business or traveling to/from engagement or duties involving government business.

12. Individuals subject to this FOIA request:

- 12.1. Andrew Wheeler, EPA Administrator
- 12.2. Any personal assistant or secretary for EPA Administrator Wheeler
- 12.3. Douglas Benevento, Associate Deputy Administrator
- 12.4. Henry Darwin, Assistant Deputy Administrator
- 12.5. Ryan Jackson, Chief of Staff
- 12.6. Kevin DeBell, Acting Deputy Chief of Staff
- 12.7. Michael Molina, Deputy Chief of Staff
- 12.8. Brittany Bolen, Associate Administrator (Office of Policy)
- 12.9. Brock Terwilleger, Deputy White House Liaison

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- 12.10. Kaitlyn Shimmin, Office of Congressional and Intergovernmental Affairs
- 12.11. Susan Bodine, Assistant Administrator (Office of Enforcement and Compliance Assurance)
- 12.12. Larry Starfield, Principal Deputy Assistant Administrator (OECA)
- 12.13. Patrick Traylor, Deputy Assistant Administrator (OECA)
- 12.14. Mark Pollins, Director, Water Enforcement Division (OECA)
- 12.15. Joseph Theis, Associate Director, Water Enforcement Division (OECA)
- 12.16. Loren Denton, Chief, Municipal Branch, Water Enforcement Division (OECA)
- 12.17. Matthew Leopold, General Counsel (Office of General Counsel)
- 12.18. David Fotouhi, Principal Deputy General Counsel (Office of General Counsel)
- 12.19. Jim Payne, Deputy General Counsel for Environmental Media and Regional Law Offices (Office of General Counsel)
- 12.20. Robert Stachowiak, Acting Associate Deputy General Counsel (Office of General Counsel)
- 12.21. Dave Ross, Assistant Administrator (Office of Water)
- 12.22. Dennis Lee Forsgren, Jr., Deputy Assistant Administrator (Office of Water)
- 12.23. Anna Wildeman, Principal Deputy Assistant Administrator (Office of Water)
- 12.24. Benita Best-Wong, Principal Deputy Assistant Administrator (Office of Water)
- 12.25. Andrew Sawyers, Director (Office of Wastewater Management)
- 12.26. Martha Shimkin, Acting Deputy Director (Office of Wastewater Management)
- 12.27. Raffael Stein, Director (Water Infrastructure Division)
- 12.28. Sally Gutierrez, Acting Director (Water Permits Division)
- 12.29. Corry Schiermeyer, Associate Administrator for Public Affairs
- 12.30. Nancy Grantham, Principal Deputy Associate Administrator for Public Affairs
- 12.31. Elizabeth White, Director of the Office of the Executive Secretariat
- 12.32. Mike Stoker, Regional Administrator, EPA Region 9
- 12.33. Tomas Torres, Director, Water Division, EPA Region 9

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12.34. Amy Miller, Director, Enforcement and Compliance Assurance Division, EPA Region 9

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Please provide copies of responsive records electronically, if available, via e-mail to deputy city attorney John Roddy at John.S.Roddy@sfcityatty.org (the "Designated Deputy"). Alternatively, hard copies may be mailed to the San Francisco City Attorney's office in care of the Designated Deputy at the following address:

Office of the City Attorney
Attn: John Roddy
1390 Market Street, Suite 418
San Francisco CA 94102


Any responsive records that are withheld from inspection should be specifically and separately identified in writing, and accompanied by the claimed justification for withholding as provided by 5 U.S.C. § 552(b) and 40 C.F.R. § 2.104(i), stating the nature of the record withheld, the basis for such withholding, and an estimate of the volume of information withheld. Should you contend that any portion of a particular document is exempt from disclosure, it is requested that the exempt portion be redacted and the remaining portions be produced.

Under 40 C.F.R. § 2.104(a), EPA is required to respond to this request within twenty (20) working days. If access to the records we are requesting will take longer, please contact the Designated Deputy with information about when we might expect copies or how we may inspect the requested records. To the extent available, we request that EPA make a rolling-production of responsive records. Any questions regarding this request should be addressed to the Designated Deputy identified above.

Subject to the limitations provided by 40 C.F.R. § 2.107(d), the City will pay fees for the requested records in accordance with applicable regulations at 40 C.F.R. § 2.107(c)(1) for the requested records. Consistent with 40 C.F.R. § 2.107(e), in the event fees exceed \$1,000, please contact the Designated Deputy for further authorization before incurring additional costs.

Thank you in advance for your prompt attention and timely cooperation.

Sincerely,



DENNIS J. HERRERA
City Attorney

cc: Mayor London N. Breed
Board of Supervisors
Harlan L. Kelly, Jr., General Manager, San Francisco Public Utilities Commission

