

WORC

Western Organization of Resource Councils

May 4, 2010

Marilyn Burke
FOIA Officer
U.S. Department of Transportation
PHMSA FOIA Officer, PHH-2
East Building, 2nd Floor
1200 New Jersey Avenue, SE
Washington, DC 20590

By E-mail: Marilyn.Burke@dot.gov

Dear Ms. Burke:

In am writing on behalf of the Western Organization of Resource Councils (WORC), a 501(c)(4) non-profit organization, to request Emergency Response Plans submitted by TransCanada, a Canadian pipeline and utility company, for its Keystone I and Keystone XL pipelines, and related information.

Specifically, we request that you provide the following records and information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. Section 552 et seq and applicable regulations.

Requested Information

1. The Emergency Response Plan submitted to and approved by the Office of Pipeline Safety (OPS) of the Pipeline and Hazardous Materials Safety Administration for the Keystone I pipeline. The plan is referenced on p. I-8 of the introduction of TransCanada's application to the U.S. Department of State for a Presidential Permit for the Keystone I pipeline; see <http://www.entrix.com/keystone/project/chap1.pdf>.
2. All records in the possession of OPS, PHMSA, or DOT evaluating the Emergency Response Plan for the Keystone I pipeline, approving the Emergency Response Plan, and/or requiring changes or imposing supplemental conditions to the Emergency Response Plan.
3. The Emergency Response Plan (or Spill Prevention, Control and Countermeasure plan, or both) submitted by TransCanada to the Office of Pipeline Safety for the Keystone XL Pipeline, as described on p. 3.13-27 of the Draft Environmental Impact Statement on the Keystone XL DEIS (see <http://www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf?Open>), and records in the possession of OPS, PHMSA or DOT, if any, approving, evaluating, or requiring changes to the Emergency Response Plan or the Spill Prevention Control and Countermeasure plan, for Keystone XL.

Request for Fee Waiver

WORC requests that you waive all fees in connection with this matter. As shown below, we meet the two-pronged test under the waiver standard found at 5 U.S.C. Section 552(a)(4)(iii).

WORC is a network of grassroots organizations from seven states that include 10,000 members and 45 local community groups. WORC helps its member groups succeed by providing training and by coordinating regional issue campaigns.

WORC is a registered nonprofit corporation under the Internal Revenue Code of 1986. Our members are family farmers and ranchers, townspeople, and rural residents concerned about their communities and environment, and many of our members operate family farms and ranches.

WORC and its member groups, the Dakota Resource Council (in North Dakota), Dakota Rural Action (in South Dakota), and the Northern Plains Resource Council (in Montana), have organized and are working with affected landowners and other residents in communities along the routes of the Keystone I and Keystone XL pipelines, to minimize potential risks and adverse impacts from construction and operation of the pipelines. WORC and its member groups seek to insure that the plans of the pipeline operator, together with oversight by appropriate government agencies, provide the best possible protection against the risk of spills, and to ensure the most effective possible response by the pipeline operator and local, state, and federal emergency response personnel in the event of a spill or leak.

Disclosure is in the Public Interest

Disclosure of this information is in the public interest because it will significantly contribute to public understanding of the operations and activities of the government.

This requested information will significantly contribute to the public understanding of the issues involved. WORC is a non-profit organization with a goal to inform and educate the public regarding environmental issues, policies, and laws, and organize people to impact decisions that affect their lives. We have been substantially involved in energy development in the West for 30 years. WORC will use the information sought in this FOIA request to help the public better understand the Department of Transportation's policies, procedures and permitting related to the safe operation of the Keystone I and Keystone XL pipelines. Providing this requested information to WORC will increase the public's understanding of these issues.

The information will be used to inform the public at large.

WORC is in a unique position to ensure that information gathered via this request is distributed to a wide range of diverse people. At the heart of WORC's public education

efforts are electronic and printed newsletters and updates sent to the public-at-large, conservation organizations, local and national media, and legislators at the federal, state, and local levels. The cornerstones of our public education efforts are the *Western Organizing Review*, a print and online newsletter, distributed on a quarterly basis; and our website, at www.worc.org. A section of that website is devoted to information about the Keystone XL and Keystone I pipelines, the immediate subject of this FOIA. WORC also produces regular electronic updates and action alerts. WORC's seven member groups produce their own newsletters to distribute information in their states and local communities.

WORC also produces brochures and fact-sheets to distribute information and educate members of the public at large. Copies of WORC's brochures and fact-sheets are distributed at town meetings, public hearings, conferences, and house meetings, and are available on our website.

WORC issues press releases and its members are frequently interviewed on local radio and television stations. WORC also sponsors media tele-conferences for significant newsworthy events. The WORC website is linked to numerous other public interest organization sites providing easy access and sharing of such information.

The final analysis of the information received from this FOIA request will be presented to the public through one or more of the above means.

WORC and its member groups have long been watchdogs over federal and state regulatory agencies including but not limited to the Environmental Protection Agency, United States Forest Service, United States Bureau of Land Management, United States Department of Interior, United States Department of Agriculture, Surface Transportation Board and many state agencies and commissions. WORC's watchdog activities have included petitioning and participating in rulemaking processes; using state open records laws and FOIA requests to obtain and analyze information regarding the enforcement of federal and state environmental protection laws; meeting with agency decision makers; participating in NEPA processes; participating in federal and state permitting processes; and conducting public education campaigns.

The information will contribute significantly to the public's understanding of government activities.

Decisions made by state and federal agencies to allow or condition construction and operation of pipelines to move tar sands bitumen from Alberta, Canada, to the United States are important public policies with significant implications for local and global environments, for national energy and security policy, and for public health and safety.

WORC will use the requested documents to independently analyze and disseminate information on the Department of Transportation's implementation of its obligations related to pipeline safety, and of TransCanada's compliance with pipeline safety

requirements. The general public and various federal and state agencies will benefit from the research, compilation, and analysis of this information.

WORC has the legal and scientific resources available to analyze this information and to disseminate this information to the public-at-large. Many conservation organizations regularly seek WORC's analysis of these issues and rely upon our dissemination of information to the public.

Information obtained from this FOIA request will contribute to an understanding of the Department of Transportation's implementation of pipeline safety procedures by the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. WORC has met its burden for justifying a fee waiver. Friends of the Coast Fork v. US Department of Interior, 110 F.3d 53, 55 (9th Cir. 1997).

Obtaining the information is of no commercial interest to WORC.

Access to government documents, permitting, inspection and enforcement data, and similar materials through FOIA requests is essential to WORC's role of educating the general public. WORC, as a non-profit organization, has no commercial interest and will realize no commercial benefit from the release of the requested information.

Should you decide not to waive fees, we request that you contact us prior to incurring any costs in excess of \$100. Please feel free to request additional information concerning our fee waiver request if you believe it is needed to make a final decision.

If you elect to withhold any documents responsive to this request under any exemption of FOIA, please cite the specific exemption of FOIA you think justifies your refusal to release the information and the rationale for your decision. Please notify me of the appeal procedures available under the law.

We look forward to your reply within twenty working days as required by the FOIA (5 U.S.C. Section 552(a)(6)(A)(i)).

Please call me at (406)-252-9672 or e-mail me at jsmillie@worc.org if you have any questions regarding this request.

Sincerely,



John Smillie
Campaign Director
Western Organization of Resource Councils