

F.M. KIRBY FOUNDATION SOLICITATION EVALUATION FORM

DATE: August 27, 2020

REQUEST DATE: July 31, 2020

Last grant acknowledgement: Yes

Program Area: Environment/Animals

APPLICANT:

Environmental Defense Fund, Inc.
257 Park Avenue South
New York, NY 10010

CONTACT: Ms. Vickie Patton, General Counsel, Climate

PHONE: 212-505-2100

PAYEE OTHER THAN ADDRESSEE:

AMOUNT REQUESTED: \$90,000 **NATURE OF REQUEST:** Toward the reduction of nitrogen oxide (NO_x) and sulfur dioxide (SO₂) air pollution in the Adirondacks

GRANT HISTORY

LAST GRANT DATE: 9/16/2019

LAST GRANT AMOUNT: \$90,000

FYE DATE: 9/30/2019

AFS DATE: 12/6/2019

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|------|-----------|-----------|---|
| 2015 | \$100,000 | 9/14/2015 | Toward science-based policy solutions to protect the Adirondacks from acid deposition |
| 2016 | \$100,000 | 9/12/2016 | Toward science-based policy solutions to protect the Adirondacks from acid deposition |
| 2017 | \$90,000 | 9/15/2017 | Toward science-based policy solutions to protect the Adirondacks from acid deposition |
| 2018 | \$90,000 | 9/17/2018 | Toward science-based policy solutions to protect the Adirondacks from acid deposition |
| 2019 | \$90,000 | 9/16/2019 | Toward science-based policy solutions to protect the Adirondacks from acid deposition |

ECC COMMENTS: The FY21 proposed project budget for the US Clear Air program projects a 126% increase over YTD actuals, due primarily to Salaries. There do not appear to be prior year actuals included for the operating budget. The FY20 budget projects to break even. The FY19 audit reveals a \$1.4M surplus. Supporting services represented 18.3% of functional expenses.

This request is very extensive and covers in detail the recent successes of EDF regarding clean air policies, many of which protect further acid deposition in the Adirondacks. The most recent of these successes was achieved in partnership with the Adirondack Council and the Sierra Club with the decision in *New York, et al. v. EPA* in which the U.S. Court of Appeals for the D.C. Circuit held that the EPA acted unlawfully when it denied requests under Clean Air Act section 126 from the states of New York and New Jersey. This decision also held that the EPA's test for downwind states to get relief under the statute was unlawful, meaning that the EPA will have to review the downwind jurisdictions' request for relief anew. While it's always shocking when the current EPA fails to accept evidence in the first place that has been essentially consistent and accepted in the policy realm for decades, it's affirming to see that the courts have sided with the arguments offered

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by EDF and its partners and we can hopefully expect some tangible results. The new question is how promptly the EPA will provide relief in response to this, as New York might move a motion to try and force EPA to act now rather than trying to just sit on and ignore this decision. While it is unfortunately anticipated that this administration's EPA will delay relief, the court decision gives a clear basis to act for a potential new administration's EPA come November.

Overall, EDF is largely unparalleled in terms of its policymaking prowess, and our approach of supporting both EDF and the Adirondack Council to lead the legal charge in protecting the Adirondacks is very strong. EDF's work is a great complement to our support for environmental science and research, outreach/education, and advocacy achieved by our other grantees in that area. I recommend the targeted \$90K.

JJK COMMENTS: The July 14th legal victory for *New York et al* in the DC Court of Appeals should not be understated, because it represents an important protection for a goal that FMKF has pursued for some time: reducing acid rain deposition. And it demonstrates the role that EDF can play. Local Adirondack environmental grantees certainly have strong advocacy networks, but given the interstate legal questions raised by cross-state pollution, a power like EDF can use its own formidable litigation experience, rally other states and partners, and call up from a deep bench of lawyers in order to win federal victories.

While the rollbacks in environmental protections over the last few years has been concerning, the nationwide reductions made of sulfur dioxide, nitrogen oxide, and mercury are uplifting, indications that EDF's legal victories and tough stance on enforcement have made a significant difference in a short amount of time. For example, according to this request, SO₂ emissions have declined 81%; NO_x, 58%; and mercury, 89%.

Their experience is also seen in their strategic preparation for shifts in political winds and anticipation for EPA rulings. For example, in May of 2020, the EPA finalized a rule that weakened legal foundations for Mercury and Air Toxics Standards. EDF had, at the ready, its challenge, suing the EPA on June 19 for unlawful efforts in reversing its own findings. A ruling awaits.

Last year's EF comments included some frustration that critical loads for the Adirondacks had not yet been established. Unfortunately, that is still the case.

On a side note, this request renewed my appreciation for a re-formed partnership with American Lung Association. Reading about the ways in which air pollution, particularly upwind or cross-state pollution, affects the health of NY and NJ residents helped bring into focus a cross-docket strategy to foster healthy communities. While organizations like EDF handle legal environmental defense and groups like Nature Conservancy help preserve and protect land, we can now also look to ALA to be a crucial partner – from a medical perspective – in creating cleaner and healthier air.

Last year's grant of \$90K represented 0.2% of total foundation and institutional support. As another measure, it represented 5% of total actual 2019 – 2020 expenses for US Clean Air – Protect and Defend fund. (For DLK: It might make sense to issue EDF our "apply-earlier" notification for 2021. This audit was complete in December 2019.)

We have not visited EDF since 2016. Let's put them down for a video conference in 2021.

I recommend \$90K, for the project listed below.

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SDK COMMENTS: I don't remember as much narrative devoted for the "political" fight/advocacy efforts of EDF in the past, but I "get" it in today's climate (no pun intended). Carl Ferenbach (his parents good friends of our parents, but long past) must be going on 20+ years as Chair of the Board. I have yet had direct communication with him; kind of strange.

DISPOSITION:

- Declination
- Hold for review on/about:
- Approval for: **\$90,000**
- Hold for Board Review
- Insert Information: **Toward science-based policy solutions to protect the Adirondacks from acid deposition**
- Other:

Initials: *rdk* Date: *8/27/20*
Check #: _____ Date: _____