"idaemon.rtpnc.epa.gov"
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>

08/20/2009 02:50 PM

To Group R4Foia@EPA
cc
bcc
Subject (231145054) On-line FOIA Request

CONTRIBUTING DOC & RIN - 00697-09
Response Due: 9/18/09
Other
FOIA FS CC EAD
WMD OTHER
Fee Waiver Request
Place-on-hold

01_NAME_:Gil Rogers
02_COMPANY_:Southern Environmental Law Center
03_ADDRESS_:127 Peachtree St., Ste. 605
04_CITY_:Atlanta
05_STATE_:GA
06_ZIP_:30303
07_EMAIL_:grogers@selcga.org
08_PHONE_:404-521-9900
09_FAX_:
10_SPECIFIC_INFORMATION_NEEDED_:We are requesting all documents relating to the proposed Rosa Mine in Blount County, Alabama, and the proposed Highway 59 Mine # 1 in Tuscaloosa County, Alabama. These documents include, but are not limited to the following:

- Any correspondence to or from any state and federal agencies relating to these proposed projects;
- Any documents related to the presence of any federally protected species on the project sites, including any surveys for species protected under the Endangered Species Act;
- Any photographs of the sites; and
- Any other documents that relate in any way to the proposed project

For the purposes of this request, the term "documents" includes all written, printed, recorded or electronic: materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, maps, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages and mail in the possession or control of the Environmental Protection Agency.

11_FEE_:Up to $25, Required
12_FEE_WAIVER:Yes
13_FeeWaiver_text:Please waive or reduce any fees that you might otherwise charge for copying the materials that we have requested. By providing the copies, the EPA will be acting in the public interest. A disclosure is in the public interest if (1) it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) it is not primarily in the commercial interest of the requester. As you know, the public interest standard of the fee waiver provision of the FOIA should be "liberally construed" in favor of an organization like SELC. McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987); Pederson v. Resolution Trust Corp., 847 F. Supp. 851, 855 (D.Colo. 1994); Etlinger v. FBI, 596 F. Supp 867, 872 (D. Mass. 1984).

SELC is a 501(c)(3) non-profit organization with over 18 years of experience disseminating public information on environmental issues, including Corps regulatory issues. See 5 U.S.C. § 552(a)(4)(A)(iii). SELC's website includes information regarding SELC projects. SELC frequently publishes reports and issues press releases regarding its projects. (http://southernenvironment.org/newsroom/). Members of SELC are interviewed by the media to explain their work and its significance. (See, e.g., "Politics and the OLF," Winston-Salem Journal, March 1, 2007, http://www.journalnow.com/servlet/Satellite?pagename=WSJ/MGArticle/WSJ_ColumnistArticle&c=MGArticle&cid=1149193442561&path=/opinion). SELC's website contains documents generated by SELC for the specific purpose of educating the public on particular issues. (See, e.g., http://southernenvironment.org/publications/albemarle_retail_may06.pdf). SELC also assists the public in locating information relating to a particular topic by collecting and posting relevant information, documents, and links to other websites. (See, e.g.,

http://southernenvironment.org/cases/cerulean/index.htm). All of this information is available for free to any interested member of the public. SELC staff also educate the public by speaking at conferences and other public meetings about environmental and natural resource issues in the Southeast. A fee waiver clearly will benefit the general public through increased notice and understanding of the operations of the government and of potential or proposed major policy initiatives. SELC further certifies that disclosure of the information sought is not primarily in the commercial interest of the requester.

15_ExpeditedWaiver_text

WARNING NOTICE
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Referred: http://www.epa.gov/foia/requestform.html
TSSMS: epafoia1
Mail to File: R4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
1200 Pennsylvania Avenue, NW (2822T)
WASHINGTON, DC 20460

August 26, 2009

Mr. Gilbert B. Rogers
Southern Environmental Law Center
127 Peachtree Street, Suite 605
The Candler Building
Atlanta, GA 30303-1800
United States

RE: Request No. 04-RIN-00697-09

Dear Mr. Rogers:

This is in response to your Freedom of Information Act (FOIA) request, 5 U.S.C. 552 seeking records related to all documents relating to the proposed Rosa Mine in Blount County, AL and the proposed Highway 59 Mine # 1 in Tuscaloosa County, AL and for a waiver of fees in connection with that request.

The FOIA directs agencies to furnish records without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. 5 U.S.C. 552(a)(4)(A)(iii)(1994 & Supp. IV 1998).

Requests for fee waivers must be considered **on a case-by-case basis** and address the requirements for a fee waiver in sufficient detail for the agencies to make an informed decision. In determining whether the statutory requirements are met, agencies must consider six factors in sequence. These factors are summarized below.

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government. A request for access to records for their informational content alone does not satisfy this factor.

2. For the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. One's status as a representative of the news media alone is not enough.

4. The disclosure must contribute "significantly" to public understanding of government operations or activities.

5. The extent to which disclosure will serve the requester's commercial interest, if any.

6. The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest.

Should you wish to receive a fee waiver, you must address, in sufficient detail, these six factors. You may send your response by email to hq.foia@epa.gov, or by facsimile to this office (202) 566-2147. If we do not hear from you within 7 days from the date of this letter, we will deny your request for a waiver of fees based on insufficient justification. Records will be sent if you have provided assurance of payment should fees exceed $25.00.

If you have any questions, please contact the Requester Service Center at hq.foia@epa.gov, or call 202-566-1667.

Sincerely,

Larry F. Gottesman
National FOIA Officer

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 404-521-9900

THE CANDLER BUILDING
127 PEACHTREE STREET, SUITE 605
ATLANTA, GA 30303-1840

Facsimile 404-521-9909

August 26, 2009

Larry F. Gottesman
National FOIA Officer
National Freedom of Information Office
U.S. Environmental Protection Agency, FOIA and Privacy Branch
1301 Constitution Ave., NW, Room 6416J
Washington, D.C. 20004

AUG 26 2009

Re: FOIA Request No. 04-RIN-00697-09

Dear Mr. Gottesman:

This letter justifies our request for a fee waiver in connection with our Freedom of Information Act inquiry regarding the proposed Rosa Mine in Blount County, Alabama, and the proposed Highway 59 Mine # 1 in Tuscaloosa County, Alabama. Both of these proposed surface coal mines would discharge pollutants into bodies of water that are already impaired and are not meeting their designated uses under the federal Clean Water Act.

SELC qualifies for a public interest fee waiver in this case. Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), "[d]ocuments shall be furnished without any charge or at a [reduced] charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." It is well settled that "Congress intended that the public interest standard be liberally construed." Eudey v. CIA, 478 F. Supp. 1175, 1177(D.D.C. 1979); see also McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987); Ettlinger v. FBI, 596 F. Supp. 867, 872 (D. Mass. 1984).

In the present case, SELC has made an adequate showing to qualify for a public interest fee waiver. In its FOIA request, SELC explained how disclosure of the requested materials will contribute significantly to public understanding of the activities of EPA and other state and federal agencies (specifically the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the Alabama Department of Environmental Management, and the Alabama Surface Mining Commission) with regard to the process of evaluating the environmental impacts of discharges from coal mines in Alabama. Specifically, the subject matter of the requested records concerns several identifiable operations or activities of the government, that is, the consideration by EPA and other agencies of applications to discharge significant quantities of metals, sediment, and other pollutants, into Alabama waterways, which are also used for drinking water and other purposes. We are particularly concerned here because both mines, if approved, will contribute more pollution to waterways that are already overwhelmed and whose ecological functions have been compromised.

Disclosure of the requested material will contribute significantly to the public's understanding of the aforementioned government activities. The requested records will, by definition, be informative of the agencies' actions in evaluating the environmental impacts of the proposed coal mines. The requested records will reveal what information the EPA has considered in evaluating the mines and what records it has generated in meeting its legal obligations under various environmental laws, such as the Clean Water Act. The requested records will additionally reveal the concerns EPA expressed to other federal agencies, such as the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers; what response, if any, it received from other federal agencies regarding its concerns; and what part these environmental concerns have played in the permitting process, if any.

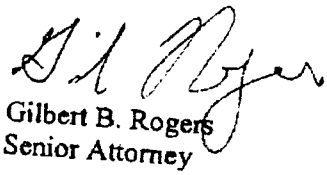
Furthermore, the disclosure of the requested materials will contribute to the public's understanding of issues related to the proposed Rosa Mine and Highway 59 Mine # 1—as opposed to the understanding of the requester or a narrow segment of interested persons—because SELC will communicate the information to its client nonprofit organizations, its supporters, and to the public at large. SELC, a regional public interest law and advocacy organization with numerous supporters from Alabama, has long been involved in monitoring the environmental impacts of federal government activities in Alabama and other southeastern states. Information gleaned from the requested records will be shared with other non-profit entities and will also be disseminated to the public at large as appropriate to further the public-service mission of the SELC, through SELC's website and newsletters, editorials in local newspapers, comments at public meetings, and written comments regarding government actions. Accordingly, the disclosure will contribute significantly to public understanding of these government operations or activities.

Finally, the disclosure of the requested information will not serve SELC's commercial interest at all. In fact, SELC has no commercial interest at stake. SELC is a 501(c)(3) non-profit entity with public interest missions (described above) that, by definition, has no commercial interests. Because SELC does not have a commercial interest in the government operations and activities that are described above and that are the subject of the FOIA request, the disclosure of the information will not serve any commercial interests or benefit SELC financially. Thus, by definition, the public interest in the disclosure of the materials outweighs the requester's non-existent commercial interest.

In sum, based on the factors discussed above, in addition to the high level of public interest in the controversial subject matter of the FOIA request, we believe a fee waiver in this case would be appropriate.

Thank for your time and attention to this matter. Should you have any questions, please feel free to contact me at (404) 521-9900.

Sincerely,



Gilbert B. Rogers
Senior Attorney

GBR/gnd

FOIA fee waiver letter for Request No. 04-RIN-00697-09

FOIA HQ

Gabrielle Dean

08/26/2009 03:42 PM

Please see attached.

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8.26.09 Rosa Mine FOIA Letter re fee waiver.pdf

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460
August 28, 2009

OFFICE OF
ENVIRONMENTAL INFORMATION

Mr. Gilbert B. Rogers
Senior Attorney
Southern Environmental Law Center
127 Peachtree Street, Suite 605
Atlanta, GA 30303

RE: Request Number 04-RIN-00697-09

Dear Mr. Rogers:

This is in response to your request for a waiver of fees for the processing of your Freedom of Information Act (FOIA), 5 U.S.C. 552 request. Your FOIA request is seeking a copy of records regarding the proposed Rosa Mine in Blount County, Alabama, and the proposed Highway 59 Mine #1 in Tuscaloosa County, Alabama.

We have reviewed your fee waiver justification and based on the information you provided, we are granting your request for a fee waiver. However, this fee waiver does not include a waiver of fees for otherwise publically available records. The Environmental Protection Agency's Region 4 office in Atlanta, GA will be responding to your information request.

If you have any questions concerning this fee waiver determination, please contact Vivian Warden of my staff at (202) 566-1667.

Sincerely,

Larry F. Gottesman
National FOIA Officer