SOUTHERN ENVIRONMENTAL LAW CENTER

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July 15, 2014

Via FOIAonline Electronic Submittal

Regional Freedom of Information Officer
U.S. Environmental Protection Agency, Region 4
SNAFC Building, 61 Forsyth Street, S.W., 9th Floor
Atlanta, GA 30303-8960

Re: Freedom of Information Act Request Regarding Cliffside Steam Station, Mooresboro, North Carolina

To Whom it May Concern:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, the Southern Environmental Law Center hereby requests, on behalf of the Western North Carolina Alliance ("WNCA") access to the following documents or other public records:

- All documents related to the removal of hazardous waste as defined by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6903(5), from the Cliffside Steam Station (Information System ID: NCD043678986) obtained since January 1, 2012. This request includes all documents whether produced by the generator, transporter, or destination facility for hazardous waste as defined in 40 C.F.R. § 260.10.

This request specifically includes all manifests (EPA Form 8700-22), reports, studies, correspondence, memoranda, e-mails, analyses, meeting notes or other notes of any kind, drafts and working papers, and every other document, recorded communication, or record of any kind (including records which exist electronically). In addition, we request access to each version of a record or document, whether it is a draft, has been electronically deleted, has attachments, bears annotations, etc.

If you take the position that any of the above-described public records are not open to public inspection under the FOIA, please explain the basis for your position and identify any statute, rule of law, or other authority upon which you rely.

To reduce costs and expedite delivery, we prefer to arrange to review records in-person and provide our own scanner in order to copy records on-site and eliminate copy fees. We will provide a duplicate set of materials we scan on a CD upon request. We are also open to utilizing the "FOIAonline" reading rooms to access responsive documents. If the EPA prefers to send the public records, we request that information be delivered electronically, on CD or by email, to the extent possible.

If the agency believes a fee nonetheless may be incurred by providing access to or copies of the project file, on behalf of WNCA, we request a waiver of any fees associated with this request, pursuant to the FOIA fee waiver provision, § 552(a)(4)(A)(iii).

We request that any fees associated with this request be waived because disclosure of information in the requested records would be in the public interest. The FOIA provides that "[d]ocuments *shall* be furnished without any charge or at a charge reduced below the fees established ... 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) (2006) (emphasis added). Congress' stated main purpose in amending the FOIA in 1986 was "to remove any roadblocks and technicalities which have been used by various Federal agencies to deny waivers or reductions of fees under FOIA." 132 CONG REC. S16,496 (Oct. 15,1986) (statement of Sen. Leahy). Congress intended the amendment to the FOIA's public interest provision "to be liberally construed in favor of waivers for noncommercial requesters." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003); *McClellan Ecological Seepage Situation v. Carlucci*, 853 F.2d 1282, 1284 (9th Cir. 1987) (both quoting 132 CONG. REC. S14,298 (Sept. 20 1986) (statement of Sen. Leahy)).

WNCA is a non-profit organizations that engages citizens in various arenas of environmental protection including protection from the release and transportation of hazardous materials generated or stored at coal-burning power plants. WNCA has years of experience in educating the public and sharing information regarding the dangers of exposure to RCRA-regulated substances. Its staff members are interviewed by the media to explain their work and its significance, and they educate the public by speaking at conferences and other public meetings about precautions necessary to ensure RCRA regulated materials are generated, transported and stored appropriately. Disclosure of the requested records will make a significant contribution to the public understanding of hazardous substances associated with the Cliffside Steam Station. We understand the requested documents are not currently in the public domain and have not yet informed the public discussion about the best options for transporting and storing hazardous substances at this facility. In addition, WNCA will not benefit commercially from the disclosure of the requested records.

If you have any questions, please do not hesitate to contact me at 828-258-2023. I am happy to work with you to clarify the scope of our request and to facilitate the production of the requested public records. Thank you in advance for your assistance.

Sincerely,

Austin DJ Gerken