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Submitted via FOIA online:
https://foiaonline.regulations.gov

Regional Freedom of Information Officer
U.S. EPA, Region 9
75 Hawthorne Street (OPA-2)
San Francisco, CA 94105

RE: Freedom of Information Act Request regarding Hickman's Egg Ranch, Inc., Maricopa County, Arizona

Dear FOIA Officer:

This request is sent by Earthrise Law Center ("Earthrise") on behalf the Socially Responsible Agriculture Project ("SRAP") pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq*.

This request relates primarily to several egg-laying facilities owned and operated by Hickman's Egg Ranch, Inc. and/or Mr. Glenn Hickman (collectively, "Hickman"), including Hickman's facilities at 32425 W. Salome Highway in Arlington, Arizona 85322 ("Arlington South"), 32902 W. Ward Road, Arlington, Arizona 85322 ("Arlington North"), 12710 N. Murphy Road, Maricopa, Arizona 85239 ("Maricopa Facility"), and 41625 West Indian School Road, Tonopah, Arizona 85354 ("Tonopah Facility").

A. Records Requested

SRAP requests that the U.S. Environmental Protection Agency ("EPA") provide copies of the following records:

1. All records received in response to EPA Region 9's Clean Air Act ("CAA") § 114 information request to Hickman dated June 1, 2016, and any subsequent CAA information requests to Hickman;

2. All records related to whether EPA considers any portion of the emissions from the Arlington, Maricopa, or Tonopah Facilities to be "fugitive emissions" for purposes of any regulatory or permitting program under the CAA or the Arizona State Implementation Plan ("SIP"), including any provision of the Maricopa County Air Pollution Control Regulations approved as part of the Arizona SIP;

3. All records, including correspondence with Hickman, Arizona Department of Environmental Quality ("ADEQ") and/or Maricopa County Air Quality Department ("MCAQD"), dated on or after January 1, 2000, relating to the regulation of the Hickman Facilities under the CAA or the Arizona SIP;

4. Any determination by EPA or any state or local air quality regulatory agency, dated on or after January 1, 2000, that any egg-laying facility is a major source of particulate matter ("PM") or volatile organic compounds ("VOC") emissions for purposes of federal CAA permitting under Title V or the New Source Review ("NSR") permitting programs;

5. Any records dated on or after January 1, 2000 relating to any pollution control equipment for emissions of PM and/or VOC considered for, or installed at, any livestock facility, including records relating to whether such equipment (a) may satisfy best available control technology ("BACT") or lowest achievable emissions rate ("LAER") requirements for federal NSR permitting; or (b) is technologically and economically feasible for the facility.

Please provide records in electronic format wherever possible. Records should be delivered to:

James N. Saul
Earthrise Law Center
Lewis & Clark Law School
10015 SW Terwilliger Blvd.
Portland, OR 97219

B. Exempted and nonexistent documents

Please include in your response an explanation of which documents, if any, may be privileged or exempt from this FOIA request and why. 40 C.F.R. § 2.104(f). If you should seek to prevent disclosure of any of the requested records, please justify your refusal by referring to the specific exemption that you are invoking under the FOIA. *Id.* § 2.104(h)(2). Also, please

provide those portions of the documents with information request that are not specifically exempted from disclosure. If the documents do not exist, please indicate that in your written response. We reserve the right to appeal any denial. *Id.* § 2.104(j).

C. Request for Expedited Processing

SRAP requests that you respond to this request immediately as there is an urgent need for them to inform the public about the nature of the Facility's emissions and compliance status as well as the scope and results of EPA's inspections, investigation requests, and other compliance efforts. 40 C.F.R. § 2.104(e)(1)(ii). As EPA is well aware there is great public interest in the Hickman Facilities, given their massive quantities of air pollutant emissions and the ongoing nuisance odors and other harmful impacts suffered by nearby residents. Therefore, the prompt release of the information requested herein is paramount.

D. Request for Fee Waiver

SRAP request that you waive all fees in connection with this request. FOIA carries a presumption of disclosure and the fee waiver was designed specifically to allow nonprofit public interest groups, such as SRAP, access to government documents without the payment of fees. Federal courts have stated that FOIA "is to be liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)). *See also Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003). As shown below, SRAP meets FOIA's two-pronged test for a fee waiver because disclosure of the requested documents is both in the public interest and not primarily in the commercial interest of SRAP. 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l).

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

SRAP qualifies for a fee waiver because the requested information is likely to significantly contribute to the public understanding of government operations or activities. Under FOIA the fee associated with the document production is waived if the release of the information is in the "public interest." 5 U.S.C. § 552(a)(4)(A)(iii) ("documents shall be furnished without any charge . . . if disclosure of the information is in the public interest"). Pursuant to EPA's implementing regulations at 40 C.F.R. § 2.107(l)(1)(c), EPA must consider whether (1) the subject of the request concerns the operations or activities of the government; (2) disclosure is "likely to contribute" to an understanding of government operations or activities; (3) disclosure will contribute to public understanding of a reasonably broad audience of persons interested in the subject; and (4) the resulting contribution to public understanding of government operations or activities is likely to be significant. Because disclosure of the

information SRAP requests herein meets these four factors, disclosure is in the public interest and SRAP should be granted a fee waiver.

a. The subject of SRAP's request directly and clearly concerns "the operations or activities of the government."

SRAP's request concerns the operations and activities of the government. 40 C.F.R. § 2.107(l)(2)(i). The requested documents relate to EPA's actions under the Clean Air Act (CAA) to ensure the protection of the environment and human health. Whether the Facility is in compliance with EPA's regulations under those statutes and the actions EPA has taken or may take to determine the Facility's compliance status are precisely the type of agency operations and activities contemplated by the FOIA fee waiver provision.

b. Disclosure of the requested information is "likely to contribute" to an understanding of government operations or activities.

The information requested by SRAP is likely to contribute to an understanding of government operations and activities. 40 C.F.R. § 2.107(l)(2)(ii). To the best of SRAP's knowledge, the requested information is not already in the public domain. The information contained in the requested documents will provide an otherwise unavailable window regarding EPA's implementation of its investigation and enforcement authorities under the CAA. This information will not only allow the public to understand the results of EPA's compliance investigation activities, but will provide the public the opportunity to review EPA's process for initiating such activities and determining what remedial steps, if any, are warranted at the Facility. Such information is critical for the public to be assured that the CAA is being implemented as Congress intended. Thus, the requested records will be "meaningfully informative" about EPA's operations and activities.

c. Disclosure of the information requested by SRAP will contribute to public understanding of the subject.

The requested information will contribute to public understanding of the subject. Information that could "support oversight of [an agency's] operations" is the type of information that Congress considered to have a "high potential for contribution to public understanding." *McClellan Ecological*, 835 F.2d at 1286.

SRAP is a national organization, and will provide this information to its members, supporters, and advocacy networks within Region 9 and nationwide, thus contributing to the public's understanding of this subject, as well as residents of Maricopa County and elsewhere in Arizona. SRAP intends to disseminate information gleaned from the disclosed records to its members and the general public through a vast array of diverse and highly effective channels, including: SRAP's newsletter and website; press releases; presentations at conferences; letters and emails to SRAP supporters, as well as through social media such as SRAP's Facebook and

Twitter accounts. With the analytical input from SRAP, the requested documents will significantly enhance the public's understanding of the EPA's oversight activities, and any attendant issues concerning effects on neighboring communities, natural resources, and water and air quality, among others. *See Carney v. U.S. Dept. of Justice*, 19 F.3d 807, 814 (2d. Cir. 1994) (observing that the relevant inquiry is "whether [the] requester will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject"). *See also Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005) (finding requester's publication of online newsletter and intent to create website using requested records, among other things, sufficient for dissemination purposes).

SRAP intends to analyze the documents provided to ensure that EPA is appropriately monitoring and investigating Hickman's CAA compliance and intend to provide the public with the information regarding the facilities' impacts to local and regional air quality. SRAP is comprised of professionals with scientific and legal expertise who regularly write, speak, and teach on environmental compliance and other issues regarding environmental quality and agriculture before national audiences. SRAP is uniquely qualified to disseminate the requested information to a "reasonably broad audience of persons interested in the subject." 40 C.F.R. § 2.107(l)(2)(iii).

d. The disclosure will contribute "significantly" to public understanding of government operations or activities.

Disclosure of records pertaining to EPA's investigation, enforcement, and interpretation of the CAA as applied to Hickman's facilities is likely to "significantly" contribute to public understanding of EPA's operations and activities in the Pacific Northwest. 40 C.F.R. § 2.107(l)(2)(iv). The disclosure of the process EPA used to conduct its investigations of the Hickman's facilities and the result of those investigations will contribute to public knowledge that did not exist pre-disclosure. None of the requested information is currently available to the public. SRAP's subsequent analysis and dissemination of this information to the public will increase public understanding to a significant extent *See Ctr. For Biological Diversity v. OMB*, 546 F. Supp. 2d 722, 731 (N.D. Cal. 2008) (granting a fee waiver because "[m]ere knowledge of the weight [the OMB placed upon greenhouse gas emissions when it conducted its analysis] will significantly increase the public's understanding"). SRAP has a consistent record of significantly increasing public understanding of the effects of federal agency action on large-scale animal agriculture facilities such as Hickman's.

2. SRAP has no commercial interest in the requested information.

The second element of the fee waiver analysis addresses the requester's "commercial interest" in the information. To determine if the request is made primarily for the commercial benefit of the requester, EPA's regulations examine two relevant factors. 40 C.F.R. § 2.107(l)(3).

The first factor considered is "whether the requester has a commercial interest that would be furthered by the requested disclosure." *Id.* § 2.107(l)(3)(i). As 501(c)(3) nonprofit, tax-exempt organizations, SRAP has no commercial, trade or profit interest in the material requested. SRAP will not be paid for or receive other commercial benefits from the publication or dissemination of the records requested. Therefore, SRAP does not seek this information for any use that furthers a commercial interest.

The second factor hinges on "the primary interest in the disclosure." *Id.* § 2.107(l)(3)(ii). The identified commercial interest cannot be significantly more substantial than the public interest. *Id.* Because SRAP has no commercial interest whatsoever in the information requested, even a modest public interest will tip the balance in favor of a fee waiver. Here, there is great public interest in the release of the materials sought because they will provide previously unavailable information regarding EPA's investigation, interpretation, and enforcement of the CAA with respect to concentrated animal feeding operations such as Hickman's and the potential impacts of this Facility on the environment and human health. Thus, assuming *arguendo* that SRAP has some "commercial" interest in the documents requested, a complete fee waiver would still be appropriate because SRAP's primary interest in the material is to inform the public about the operations and activities of EPA that affect environmental quality. Therefore, the disclosure of the information is not "primarily in the commercial interest of" SRAP, and a fee waiver is appropriate.

E. Conclusion

Thank you for your attention in this matter, and I look forward to hearing from you shortly. If you have any questions, feel free to contact me at (503) 768-6929 or by Email at jsaul@lclark.edu.

Sincerely,

James N. Saul