

August 6, 2010  
Freedom of Information Officer (6MD-OO)  
Helen Mollick, Deputy Counsel  
EPA Office of Inspector General  
Mail Code 2411T  
Washington, DC 20460-0001

**Sent by FAX to 202 5660870 Attention: Helen Mollick**

**Re: Freedom of Information Act Request**

Dear FOIA Officer:

In April 2010, the Environmental Protection Agency (EPA) Office of Inspector General (OIG) issued a hotline report *EPA Region 6 Needs to Improve Oversight* regarding a complaint of Citizen Action and Registered Geologist Robert Gilkeson. EPA Region 6 did not agree with the conclusions and recommendations in the report and asked that the matter be elevated in accordance with EPA's Audit Management Process. A written response to the Hotline Report was requested by OIG within 90 days including corrective action plans.

Under the Freedom of Information Act, 5 U.S.C. § 522, Citizen Action New Mexico is requesting access to a full and complete copy of the EPA Region 6 Response including all accompanying documents and the corrective action plans and schedule prepared for the Response including all documents in any form, whether from schedules, correspondence, memoranda, tape recordings, electronic or handwritten communications, notes or handout documents used to prepare the report.

The requested documents are a matter of public concern because they are relevant to the April 2010 OIG Hotline Report regarding issues raised about Sandia National Laboratories' Mixed Waste Landfill groundwater monitoring and problems related to EPA Region 6's oversight over the Resource Conservation and Recovery Act ("RCRA") program administered by the New Mexico Environment Department.

The requested documents may also contain factual material regarding the need for and recommendation for the scientific review of a NMED report by the Risk Management Research Program Groundwater and Ecosystem Restoration Research Laboratory in Ada, OK. The NMED report is entitled *Evaluation of the Representativeness and Reliability of Groundwater Monitoring Well Data, Mixed Waste Landfill, Sandia National Laboratories* by William Moats *et al.* (2006).

These issues surrounding the Region 6 Response are a matter of concern to the public in New Mexico. The issues have been covered by press in New Mexico and nationally.

EPA OIG should apply the new FOIA policy of President Obama's administration and provide the documents "as servants of the public":

“Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

“All agencies should adopt a **presumption in favor of disclosure**, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.” (Emphasis supplied).

Citizen Action believes that the new FOIA policy announced by President Obama should militate against any claim of the deliberative process exemption (Exemption 5) under FOIA.

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

Citizen Action New Mexico is a special interest citizen-based organization that publishes or disseminates information that will be beneficial to the public as well as for operations of the government, scientific and potential regulatory purposes; therefore, I am requesting a waiver of all fees associated with this request. Disclosure of the requested information is in the interest of the public as it is likely to contribute significantly to public knowledge and education; public health issues; and other concerns frequently cited by members of the public (\*please refer to Section 2). This request is not in our commercial interest nor are we a business attempting to collect information on industrial competitors.

Section 1.

Please note the following information:

1. Citizen Action is a non-profit citizen group under the fiscal auspices of the New Mexico Community Foundation (NMCC), Santa Fe, New Mexico. Citizen Action represents at least 16-non-governmental organizations (NGOs) and neighborhood associations as a part of its coalition. The organizations within the coalition include: Southwest Research and Information Center (SRIC); Citizens for Alternatives to Radioactive Dumping (CARD); Peace Action New Mexico (PANM); Progressive Albuquerque Network (PAN); Southwest Organizing Project (SWOP); Native Forest Network (NFN); Center for Action and Contemplation (CAC); Green Party of New Mexico; Bernalillo County Green Party; International Depleted Uranium Study Team (IDUST); Living Rivers; Forest Guardians; Mountain View Neighborhood Association;

South Meadows Neighborhood Association; New Mexico Solidarity Network (NMSN); and Stop The War Machine (STWM).

2. Citizen Action's work on issues at SNL/NM has been funded both by private donations from individuals and through several foundations.

3. Citizen Action's interactive website ([www.radfreenm.org](http://www.radfreenm.org)) contains a partial listing (29 entries) of information from previous documents obtained by our organization under the Freedom of Information Act (FOIA). The contact information for the University of New Mexico Zimmerman Library, U.S. Department of Energy Reading Room, where the entire collection of FOIA documents is available for public review, is also posted on our website.

4. Citizen Action's website receives on average between 8,000 - 10,000 hits per month. In addition to posting independent technical reviews of the Mixed Waste Landfill, press releases, newspaper articles, action alerts, related lawsuits, and meeting announcements the results of FOIA requests are summarized and posted on the Citizen Action website.

5. Deleted.

6. Citizen Action sends press releases to the local media announcing the results of FOIA reviews for further dissemination of this information to the public. Citizen Action also makes appearances on television and radio programs and disseminates information obtained from FOIA requests.

7. Citizen Action maintains an active and rapidly growing e-list serve and member mailing list of over 700 people to provide updated information on issues at SNL/NM. We network with other groups in disseminating information on SNL/NM issues such as neighborhood organizations, clubs, churches, schools, unions, businesses, and other non-governmental organizations

8. As we have done in the past, information obtained from previous FOIA requests are shared with the New Mexico Environment Department (NMED) and news media.

The general public has a keen interest in any factor bearing on public health, regardless of location. In addition, as the underlying subject matter of this request concerns the validity of EPA claims of the efficacy and oversight of cleanup efforts and the EPA OIG review of such claims, the public has an acute interest in the truth of representations to the public made by government agencies.

## Section 2.

We are requesting the full disclosure of the information requested under this FOIA as this information will:

1) Fulfill the public's right-to-know about SNL/MWL's history, collection of monitoring data and requirements for compliance with the Resource Conservation and Recovery Act

("RCRA"). This will enhance knowledge of current and past government operations involving the SNL MWL especially the problems associated with Region 6's failure to exert proper oversight over the RCRA program run by NMED.

2) Provide, in the spirit of openness and transparency, responses to questions from the public concerning SNL/NM's future programs and activities, Region 6 and NMED conspiratorial conduct to block Freedom of Information requests, and misuse of national security classification to prevent Citizen Action from obtaining FOIA documents.

3) Enhance the general public's understanding of government operations at SNL/NM, NMED, EPA Region 6 and EPA OIG;

4) Provide information that may affect regulatory issues and oversight by the EPA and NMED concerning future programs and activities at SNL/NM, NMED, EPA Region 6 and EPA OIG and the potential impact of these programs and activities on surrounding communities;

5) Provide information about programs and activities at SNL/NM, NMED, EPA Region 6 and EPA OIG that may potentially have an impact on the Albuquerque regional aquifer;

6) Provide members of the public with information that may potentially relate to important matters of public health and protection of the environment and investigation of public hotline complaints concerning SNL/NM's, NMED, EPA Region 6 and EPA OIG

**Citizen Action New Mexico is requesting a full fee waiver for all items requested under this FOIA request with the EPA OIG as the agency solely responsible for any costs associated with this request at no cost to the taxpayer or the requester. We hope this information is sufficient for you to assess our request for a fee waiver.**

To the extent that EPA OIG needs to perform a detailed review, Citizen Action requests that all fees be waived because "disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor" (5 U.S.C. 552 (a) (4)(A)):

*1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.*

The FOIA request is, by its terms, limited to identifiable activities of EPA OIG, EPA Region 6 and its oversight of the NMED.

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

The requested material consists of a recent EPA OIG investigation and response by the EPA Region 6 regarding a legacy era waste site that is contaminating Albuquerque, NM groundwater. As such, the requested records are the most meaningful documents that could be requested on this topic.

*3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requestor or a narrow segment of interested persons.*

The requested information concerns the extent to which public health and safety is still at risk in one of the most highly publicized Sandia National Laboratories cleanup sites. Thus, this request concerns not only the peace of mind of the people of Albuquerque and its environs but also the peace of mind of anyone living near a toxic waste dump that is under EPA oversight and EPA OIG oversight through the RCRA state authorization program.

If all or part of our request is denied, please cite each specific exemption that justifies your refusal to release the requested information, and please notify me of appeal procedures available under the law.

If you have any questions about the handling of this request or the information requested therein you may call me at (505) 262-1862.

As the FOIA requires, Citizen Action will look forward to a response from EPA OIG within 20 days. Feel free to contact us by telephone if there are any questions.

Sincerely,

David B. McCoy, Executive Director  
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