

Ms. Ivry Johnson
FOIA Officer
U S EPA Region 9 ORA
75 Hawthorne St.
San Francisco, CA 94105

Dear Ms. Johnson,

Under the Freedom of Information Act, I respectfully request a fee waiver for requests 09-RIN-00280-08, 09-RIN-00342-08, 09-RIN-00503-08 and 09-RIN-00533-08.

Although I have previously agreed on behalf of Mr. Arman to make payment for one of these requests, IMMI finds that it is a hardship at the present time to make these payments.

Since the project manager is not the authority in the EPA for granting such a fee waiver, I am now seeking this waiver from you.

We also do not believe that payment should be required for these specific document requests for the following reasons.

As stated in the first request, I am making these requests on behalf of Mr. T.W. Arman and Iron Mountain Mines, Inc., who is the property owner of the Superfund site and defendants in the CERCLA action. As I stated in the FOIA request: "the property owner Mr. Arman is entitled to any data collected by the site operator."

This statement was never contested.

"Since the information I am requesting has mysteriously vanished from the Redding Library, I expect the EPA to produce it. Since we may require a complete set of Iron Mountain Mine documentation, please provide a duplicate set of the entire CD collection when you replace the missing collection to the Redding Library."

I do not believe that it is appropriate to require payment for this FOIA since it was unavailable to public access and duplication in the Redding Public Library as required by the Dec. 2000 Consent Decree.

The second FOIA request for the site operators sampling database was apparently ultimately provided, but it is peculiarly missing the particular sampling data we are seeking, sampling data that is required pursuant to the express provisions of the Statement of Work attached to the Consent Decree.

While the provided data is important information for the property owner to possess, it does not contain the data we were requesting.

Once again we maintain that as this data was requested on behalf of Mr. T.W. Arman and Iron Mountain Mines, Inc., who are the property owners of the Superfund site and defendants in the CERCLA action, and so therefore they should be entitled to this data without charge.

The second and third part of this request; seemed like simple requests to us.

"An accounting of the funds dispersed since the consent decree."

“An accounting of the Trust I and Trust II funds.”

Apparently it was not so simple for the EPA or the Site Operator.

As business people we assume that some basic accounting is a fundamental necessity for any enterprise, so we assumed that some basic accounting was taking place at the Iron Mountain Mine Superfund site, perhaps we were mistaken.

We have had several exchanges with the project manager regarding this request since March 4, 2008, and still no meaningful information has been provided.

To help make this request more specific or to reword the request in language which may more easily be understood, we hereby reiterate this request.

We seek to know what charges, (if any) in surplus or deficit of the amount of authorized expenditures for the operations and maintenance of the IMM site have been made against the funds in either the Trust I account, the Trust II account, or charged against the unforeseen cost coverage. We further seek to know exactly how much funding remains in the Trust I account, the Trust II account, and the unforeseen cost coverage, if those amounts are other than the exact amount stated in the consent decree at this time.

The two most recent requests and the response from the EPA project manager in light of recent developments concerning the site are most troubling.

Most recently Mr. Arman, and on behalf of IMMI, made a request which is essentially for the return of property (mostly maps) removed by the contractor CH2MHill and never returned. There should be no charge for the return of Mr. Arman's or IMMI's property, nor should it be delayed for any reason.

The other request is contemporaneous with and relates to evidence pertaining to specific allegations of violations of law, particularly environmental laws, and most particularly EPCRA 313, and possible negligence or other wrong doing by the EPA or by employees of the EPA, possibly including the project manager Rick Sugarek.

The request for: “testing of the sludge or the leachate or drainage from the Brick Flat toxic pit disposal cell or other disposal sites at Iron Mountain Mine.” Involves very specific data that was missing from the previously requested database where it was reasonably anticipated to be archived.

The project manager replied:

FOIA Request 09-RIN-00503-08

Sugarek.Richard@EPA.GOV

This is sent to request that you clarify your June 7, 2008 email request under the Freedom of Information Act for records pertaining to the Iron Mountain Mine Superfund site. Once I have received a clarified record request from you, I expect to be able to provide the responsive records within three weeks from your response.

You have requested that EPA provide:

"Any and all records or testing of the sludge or the leachate or drainage from the Brick Flat Pit disposal cell or other disposal sites at Iron Mountain Mine."

This request is unclear and overly broad. It is not clear whether you are interested in obtaining test data, other types of records or both. For example, your request could be interpreted to request:

- the records that pertain to test data for the sludge, leachate and drainage from post construction facilities at IMM; or
- the records that pertain to the testing work plans, data evaluation reports and related test data for the sludge, leachate and drainage from post construction facilities at IMM; or
- the records that pertain to any testing work plans, data evaluation reports and related test data for the sludge, leachate and drainage (including treatability studies, design studies, studies performed during construction and post construction facilities at IMM); or
- "any and all" records that contain the word "sludge", "leachate", "drainage", "Brick Flat Pit" or "disposal cell".

There are potentially several hundred documents included in EPA's remedial investigation, feasibility study, design, construction and O&M records that could be responsive to your request.

Thank you in advance for your attention to this matter.

We transmitted the following reply:

Dear Rick,

This is a deceitful obfuscation and your excuse is disingenuous.

There is nothing "unclear or overly broad".

I am requesting all of your sampling data, pursuant to the:

"Statement of Work

Site Operations and Maintenance"

October 2, 2000

6.4 Landfill Management Report and Plan

5.

d. At a minimum, the following flow, analytical, and geotechnical data:

i. Sludge influent flow rates to sludge drying beds (to be reported as a daily average);

ii. Filtrate flow rates from sludge drying beds and BFP (to be reported as a daily average);

iii. Filtrate water quality from sludge drying beds (to be reported as a composite daily average) and BFP (to be reported as a daily average);

iv. Sludge volume, specific gravity, solids contents of sludge hauled to BFP (to be reported on a manner consistent with the

Operations and Maintenance Plan for at least six locations from each sludge dewatering bed);

v. Total volume of sludge in BFP and revised stage storage/elevation curves;

vi. Results of routine analytical testing conducted on BFP filtrate and seepage discharge. Analytical testing shall comply with the procedures, requirements, and standards set forth in Section 14, Performance Standards and Verification Plan.

g.

v. A complete listing of the analytical and geotechnical testing and methods that will be completed prior to the sludge haulage, during the next sludge haulage, and on a routine basis.

6.8 "QAPP"

8.8 Brick Flat Pit Performance Standards

9.7.1 BFP O&M

14 "PSVP"

14.3.4

1. Sludge Performance

3. Tests for Metals Toxicities

A. TCLP

B. TTLC, STLC, Cal/WET

14.3.5 Sludge Drying Beds monitoring requirements

1.

2.

14.14.5

13.5.13 Thickener Waste Sludge

TCLP, TTLC, STLC-Citrate and laboratory results

14.5.1.5 Sludge Drying Bed Sludge TCLP, TTLC, STLC-Citrate

and any other testing of leachate at other disposal sites!

You are supposed to provide this information by tomorrow!

What are you hiding?

On July 24, 2008, we received the following reply.

This is to notify you that the EPA FOIA Officer has suspended work on your current FOIA document requests (09-RIN-00503-08 and 09-RIN-00533-08) pending your payment of outstanding charges for costs that EPA incurred in responding to your previous requests. EPA has not yet received payment of \$216.75 for 09-RIN-00280-08 or payment of \$229.25 for 09-RIN-00342-08. I remind you that you previously provided written assurance to EPA that you would make the required payments. I encourage you to promptly make these payments to the EPA Cincinnati Finance Center; PO Box 979078; St. Louis, MO 63197-9000. Please include the FOIA numbers on your payments to assure prompt processing. EPA will be able to resume work on your current requests once we have been notified by the Cincinnati Finance Center that your required payments for past document requests have been properly made. Thank you for your attention to this matter.

I am also providing an update on the status of five document requests

that have been submitted by you and your business associate, Mr. Arman, for records regarding the Iron Mountain Mine Superfund site. Over the past several months EPA has been diligently responding to

your several requests for extensive volumes of records, including sensitive enforcement confidential records and records that contain claimed Confidential Business Information.

March 4, 2008 request for records including the December 2000 IMM Consent Decree and appendixes, "an accounting of funds dispersed since the consent decree" and "an accounting of the Trust I and Trust II funds." On March 13, 2008 you amended your March 4, 2008 document request to include the Statement of Work for the December 2000 IMM consent decree.

§ On March 12, 2008 EPA notified you by email that documents that EPA identified as responsive to your request may contain Confidential

Business Information and that EPA would notify AIG Consultants regarding this request for documents.

§ On March 17, 2008 EPA provided to you a complete copy of the December 2000 IMM Consent Decree with all of the attachments, including the Statement of Work.

§ On June 16, 2008 AIG Consultants, Inc. submitted a letter to EPA that claims that the documents that EPA identified as responsive to your request for "an accounting of funds dispersed since the consent decree" contain information that AIG Consultants considers to be Confidential Business Information.

§ On June 17, 2008 EPA notified you by email that the only responsive document for your request for "an accounting of the Trust I and Trust II funds" was the December 2000 IMM Consent Decree, which

was previously provided to you on March 17, 2008.

§ EPA notified you on June 17, 2008 that EPA would perform an initial review of the AIG Consultants response to determine whether or not EPA may be able to provide any of the requested responsive documents, in whole or in part. EPA also requested that you notify EPA whether it may be possible for you to focus your document request

to facilitate EPA's response.

§ On June 18, 2008 you notified EPA by email that you continue to request a "full accounting" of the dispersed funds.

§ EPA is currently reviewing the documents that AIG Consultants considers to contain Confidential Business Information and expects to

be able to provide a written response to your document request by August 6, 2008.

09-RIN-00280-08

March 12, 2008 request for "a complete set of Iron Mountain Mine documentation, please provide a duplicate set of the entire CD collection ...".

§ On April 3, 2008 EPA notified you by email that a set of 23 CDs had been made to provide a complete set of all releasable documents that are included in the Administrative Records for the Iron

Mountain

Mine Superfund site. In accordance with regulatory requirements, EPA

requested that you provide written assurance that you would pay the

full cost of EPA's response to your document request.

§ On April 4, 2008 you provided written payment assurance by email.

§ On April 4, 2008 you picked up the set of 23 CDs and a bill for collection of \$216.75. You declined to pay the costs for the document request at the time that you received the set of 23 CDs, and

were instructed to mail your payment to the Cincinnati Finance Center

at the address on the bill for collection.

§ I have recently been notified that to date you have not made the required \$216.75 payment to EPA.

09-RIN-00342-08

April 4, 2008 request for "the data base from the treatment plant," the "enforcement analysis of ROD1" and "the P&ID (process and instrumentation diagram) and the PFD (process flow diagram) and any drawings or engineering documentation ..."

§ On April 30, 2008 EPA provided a CD that contained the entire data

base for the operation of the HDS treatment plant at IMM.

§ EPA also provided a CD that contained all of the Record Drawings for the HDS treatment plant at IMM.

§ EPA did not provide the requested enforcement confidential section

of ROD1 for the IMM Superfund site. This document is exempt from mandatory disclosure pursuant to the FOIA.

§ EPA submitted a bill for collection in the amount of \$229.25.

§ I have recently been notified that to date you have not made the required \$229.25 payment to EPA.

09-RIN-00503-08

June 7, 2008 request for "Any and all records or testing of the sludge or the leachate or drainage from the Brick Flat toxic pit disposal cell or other disposal sites at Iron Mountain Mine."

§ On July 16, 2008 EPA requested that you clarify your FOIA document

request because the original request was unclear and overly broad.

§ On July 16, 2008 you clarified your document request to focus on data records for sampling that the Site Operator is required to perform pursuant to the Statement of Work for O&M at IMM.

§ Based upon my review of your clarified request, many of the records that you are requesting have previously been provided to you.

On April 30, 2008, EPA provided a CD that contains the entire data base for the operation of the HDS treatment plant at IMM. This data base contains the records for routine sampling that is required to be

conducted pursuant to the Statement of Work, including data for "leachate or drainage from Brick Flat Pit".

§ EPA is currently reviewing the IMM Site File to identify other responsive records for your request.

§ I have been notified by the EPA FOIA Officer that work on this FOIA request is to be suspended until EPA receives payment for your past FOIA requests.

§ EPA expects to be able to respond to your document request shortly after we receive notice that you have made a full payment for your past FOIA requests.

09-RIN-00533

July 8, 2008 request for "an accounting of all records held by the EPA, its contractors, particularly CH2MHill and AIG consultants, and all records removed by CH2MHill from Iron Mountain Mines, Inc. and all records maintained by CH2M Hill concerning Iron Mountain Mines."

§ EPA is currently reviewing the IMM Site File to identify the responsive records for your request.

§ I have been notified by the EPA FOIA Officer that work on this FOIA request is to be suspended until EPA receives payment for your past FOIA requests.

§ EPA expects to be able to respond to your document request shortly after we receive notice that you have made a full payment for your past FOIA requests.

While we agree that many records are contained in the aforementioned database, the fact that the toxicity data, which is the TCLP, TTLC, STLC, and CalWET data are not contained in the database, and which is obviously what we have been seeking in our requests, since Mr. Arman and IMMI first made allegations of an imminent and substantial endangerment to the public health and the environment, and an imminent and substantial endangerment to his health and property, and which now the EPA presumes to withhold based on the alleged nonpayment of \$446.00 dollars, frankly smells of conspiracy and cover-up.

We therefore demand that the EPA immediately produce the TCLP, TTLC, STLC, and CalWET laboratory results, unconditionally.

Please contact me at (925)878-9167

Sincerely,

John Hutchens

AMD&CSI, on behalf of T.W. Arman and Iron Mountain Mines, Inc.

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