**Oil & Gas Accountability Project**
a program of EARTHWORKS

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June 9, 2009

Kevin Hagerty, Director
Office of Information Resources
U.S. Department of Energy, MA-90
1000 Independence Ave, SW
Washington, DC 20585

Re: Freedom on Information Act Request, Section 999 Energy Policy Act Contracts

Dear Mr. Hagerty:

Pursuant to the Freedom of Information Act, 5 USC Sec. 552, the Oil and Gas Accountability Project, a program of EARTHWORKS, requests the following information from the Office of Fossil Energy of the Department of Energy: any and all records of communications between the staff and/or officials of DOE's Office of Fossil Energy and its contractors regarding contracts for technical studies issued pursuant to Section 999 of the Energy Policy Act of 2005, related to the following three work products:

1) *Potential Economic and Energy Supply Impacts of Proposals to Modify Federal Environmental Laws Applicable to the U.S. Oil and Gas Exploration and Production Industry*, prepared for DOE by contractor Advanced Resources International, Incorporated, issued by DOE January 2009.
2) *Modern Shale Gas Development in the United States, A Primer*, prepared by contractor Ground Water Protection Council, Oklahoma City and contractor ALL Consulting, Tulsa, Oklahoma, issued by DOE April 2009.
3) An unnamed contract between DOE and ALL Consultants of Tulsa, Oklahoma, regarding air emissions from the U.S. oil and gas exploration and production, date unknown, study not yet released by DOE.[1]

Specifically we request any all of the following documents and correspondence:

1) Requests for Proposals, drafts of Requests for Proposals, or contract work requests and related amendments, draft reports, reviews of draft reports, comments on draft reports pursuant to the above three contracts prepared by

[1] Personal communication, Weston W. Wilson, Environmental Engineer, U.S. Environmental Protection Agency, Denver, April 29, 2009. Mr. Wilson stated that on April 20, 2009, Bill Hocheiser and Lee Moody of ALL Consulting visited EPA staff in Denver regarding this study effort. Last year, Mr. Hocheiser served in the capacity as Manager, Office of Oil and Gas Environmental Research at DOE and is now a senior manager for ALL Consulting.

FOIA-2009-000455

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DOE, its staff or officials, and its contractors pursuant to the authority and authorization provided by Section 999 of the Energy Policy Act related to these three specific contracts itemized above.

2) Communications between DOE staff and officials, and its contractors, for the above specified contracts with any of the following state or federal agencies: Arkansas Oil and Gas Commission, Louisiana Department of Natural Resources, Michigan Department of Environmental Quality, Montana Board of Oil and Gas Conservation, Montana Department of Natural Resources, New York State Department of Environmental Conservation, Ohio Department of Natural Resources, Oklahoma Corporation Commission, Pennsylvania Department of Environmental Protection, Railroad Commission of Texas, State of Tennessee, U.S. Environmental Protection Agency, and the West Virginia Department of Environmental Protection.

We request such records, reports, and information in draft and final form, no matter how produced or reproduced, and in electronic format where possible. To reduce photocopy and reproduction requirements, we request that this FOIA response be provided, it its entirely, in computer CD format only. Records include, but are not limited to, memorandum, facsimiles, e-mails, letters, reports, meeting notes, phone conversation notes, field notes, internal communications, analyses, assessments, and computer tapes.

Request for fee waiver

The Oil and Gas Accountability Project requests that you waive all fees in connection with this matter. As shown below, we meet the test under FOIA for a fee waiver, 5 USC 552(a)(4)(A)(iii).

1. The subject of the request concerns the operations and activities of the federal government.

This is a request for documents from the Department of Energy and the information is directly related to DOE's analysis and interpretations of the following federal environmental statutes: the Clean Air Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act, the Oil Spill Prevention and Control Act, and the Clean Water Act.

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

OGAP intends to assess the information provided and disseminate this information to the public and we have a proven track record in that regard. In considering whether OGAP meets these fee waiver criteria it is vital that DOE recall that, in general,

FOIA carries a presumption of disclosure and that the fee waiver amendments to FOIA of 1986 were designed to allow non-profit, public interest groups such as OGAP, access to government documents without payment of fees.

The information requested would help provide crucial insight into a number of regulatory and economic impacts of the U.S. oil and gas exploration and production industry. The informative value of this information requested and responsive documents we expect to receive have, to best of our knowledge, not previously been released to the public and thus would inform the public about the means and methods used by DOE to perform these studies. Moreover, the public interest in regulation to assure environmental and public health protection due to the effects of the oil and gas industry in the U.S. is especially high as the industry is expanding into areas of the nation not previously experiencing significant oil and gas exploration and production. Neither OGAP nor its members have any commercial interest that would be furthered by the requested disclosure.

If you elect to withhold documents responsive to this FOIA request under Exemption 5 of FOIA, please provide an itemized list of such documents, sometimes referred to as a "Vaughn list", specifying the author, the date, the nature of the content, the length of the document. Please explain: 1) why a withheld document is pre-decisional, 2) whether the relevant DOE decision has become final, 3) why the document has been determined to be deliberative, and 4) what policy qualifies this document for FOIA exemption. We suggest your office give full and deliberate consideration to the March 2009 guidance from the Attorney General of the United States regarding FOIA responses by the federal executive branch.[2]

We look forward to your reply within 20 working days as required by FOIA, 5 USC 552(a)(6)(A)(i). Please direct all responses and correspondence to this FOIA request to the address and contact information listed below.

Sincerely,

Gwen Lachelt

Gwen Lachelt, Director

cc: Mike Jacobs, Office of Fossil Energy, Washington, D.C.
Lisa Jackson, EPA, Washington, D.C.

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[2] Office of the Attorney General, March 19, 2009, http://www.usdoj.gov/ag/foia-memo-march2009.pdf. Attorney General states: 'In the face of doubt, openness prevails. An agency should not withhold information simply because it may do so legally.'