



Community
Environmental
Defense
Council, Inc.

Helen H. Slottje
Managing Attorney
hslottje@cedclaw.org
Phone 607.351.8125

VIA FACSIMILE

February 11, 2013

Eugene Leff, Deputy Commissioner
NYS Department of Environmental Conservation
625 Broadway
Albany NY 12233-0001

Dear Deputy Commissioner Leff:

This letter serves as a formal **DEMAND** that **today – February 11, 2013** - the DEC make available for inspection and copying any and all scientific or statistical studies, reports and analyses that served as the basis for the Revised Rule Making for High Volume Hydraulic-Fracturing rules noticed in the NYS Register of Rule Making Activities on December 12, 2012 (ID No. ENV-19-11-00020-RP), as well as copies of any and all of the scientific or statistical studies, reports and analyses that served as the basis for each and every part of the analysis set forth in each of the revised regulatory impact statement, the revised regulatory flexibility analysis, the revised rural area flexibility analysis, the revised job impact statement, and the assessment of public comment that were prepared and published in connection with said Notice of Revised Rule Making (collectively, the “Requested Records”).

This request for inspection and copying of the Requested Records was first made on January 11, 2013 and was clearly and **EXPLICITLY** made pursuant to the State Administrative Procedures Act § 104 which in pertinent part provides:

An agency, upon request, shall, within thirty days, make available for inspection and copying any scientific or statistical study, report or analysis, including any such study, report or analysis prepared by a person or entity pursuant to a contract with the agency or funded in whole or in part through a grant

from the agency that is used as the basis of a proposed rule and any supporting data; provided, however, that the agency shall provide for inspection only of any such study, report or analysis due to copyright restrictions.

Our January 11, 2013 request was NOT a FOIL request, and we have previously confirmed that fact to your office.

Today is February 11, 2013 and it is now *more than* 30 days since the date of the original request for access to the Requested Records. Therefore, the DEC is legally obligated to make the Requested Records available for inspection and copying **TODAY**.

We called your office this morning to make arrangement to inspect and copy the studies and reports **today**, as the DEC does **NOT** have the legal authority to delay our access beyond the 30-day period. We were informed that your office would need to “huddle” on this request, and would get back to us. We called before 9:00 am and it is now past noon, and we still have not heard back from your office.

YOU ARE HEREBY ADVISED that if the DEC does not make the Requested Records available for inspection and copying **TODAY**, we will file a formal complaint with the Office of the Inspector General.

Furthermore in such event, we reserve the right to pursue – and WILL pursue - any and all remedies available under law to compel the DEC to fulfill its statutory mandate to release the Requested Records, including without limitation seeking an injunction against the DEC if it attempts to promulgate the revised rules for HVHF, an order compelling the DEC to provide access for inspection and copying of the Requested Records, and compensation for our attorneys fees and expenses under the New York State Equal Access to Justice Act.

Please do not (continue) to fail honor this DEMAND, as it would be in the interests of all involved to avoid litigation in this matter.

Sincerely,



Helen Slottje

Attachments

cc: Catherine Leahy Scott, Acting State Inspector General
Ruth Earl, Records Access Officer NYSDEC
Kate Sinding, Esq. NRDC
Roger Downs, Sierra Club
Deborah Goldberg, Esq. Earthjustice
Dusty Horwitt, J.D. EWG
David Slottje, Esq. CEDC



Helen Holden Slottje <holden.slottje@gmail.com>

Request pursuant to § 202 of State Administrative Procedures Act (SAPA) for the Notice of Revised Rule Making for High Volume Hydraulic-Fracturing I.D. No. ENV 39-11-00020-RP

Helen Holden Slottje <holden.slottje@gmail.com>

Fri, Jan 11, 2013 at 12:49 PM

To: public@gw.dec.state.ny.us

Cc: David Slottje <dslottje@twcny.rr.com>, "Joe Heath, Esq" <jheath@atsny.com>, Dusty Horwitt <dusty@ewg.org>, Roger Downs <roger.downs@albany.twcbc.com>, Kate Sinding <ksinding@nrhc.org>, Deborah Goldberg <dgoldberg@earthjustice.org>

Dear Eugene Leff, Deputy Commissioner:

In accordance with the DEC's statutory obligation under SAPA § 202(1)(iv) and its additional and separate obligation under the provisions of SAPA § 104, on behalf of Community Environmental Defense Council, Inc., I hereby request copies of any and all scientific or statistical studies, reports and analyses that served as the basis for the Revised Rule Making for High Volume Hydraulic-Fracturing rules noticed in the NYS Register of Rule Making Activities on December 12, 2012 (ID No. ENV-19-11-00020-RP); as well as copies of any and all of the scientific or statistical studies, reports and analyses that served as the basis for each and every part of the analysis set forth in the revised regulatory impact statement, the revised regulatory flexibility analysis, revised rural area flexibility analysis, and revised job impact statement, and assessment of public comment that were prepared and published in connection with said Notice of Revised Rule Making.

Thank you very much for your cooperation in this matter.

Helen Slottje, Esq.

Managing Attorney

Community Environmental Defense Council, Inc.

PO Box 898

Ithaca NY 14851

[607-277-5935](tel:607-277-5935)

[607-323-0505](tel:607-323-0505) (fax)



FOIL 13-158 acknowledgment

Records Access <foil@gw.dec.state.ny.us>
To: holden.slottje@gmail.com

Tue, Jan 22, 2013 at 2:07 PM

This is to acknowledge receipt of your Freedom of Information Law (FOIL) request seeking "...copies of any and all scientific or statistical studies, reports and analyses that served as the basis for the Revised Rule Making for High Volume Hydraulic-Fracturing rules noticed in the NYS Register of Rule Making Activities on December 12, 2012 (ID No. ENV-19-11-00020-RP): as well as copies of any and all scientific or statistical studies, reports and analyses that served as the basis for each and every part of the analysis set forth in the revised regulatory impact statement, the revised regulatory flexibility analysis, revised rural area flexibility analysis, and revised job impact statement, and assessment of public comment that were prepared and published in connection with said Notice of Revised Rule Making."

I have referred your request to appropriate staff who may have responsive records. You may expect a reply by February 20, 2013.

If you have any questions in the interim, please contact me and reference FOIL 13-158.

Ruth L. Earl
Records Access Officer
NYSDEC
625 Broadway
Albany, NY 12233-1500
ph: [518-402-9522](tel:518-402-9522)
fax: [518-402-9018](tel:518-402-9018)



Re: Purported Acknowledgement of FOIL Request. (Your reference FOIL 13-158)

Helen Holden Slottje <holden.slottje@gmail.com>

Wed, Jan 23, 2013 at 7:18 PM

To: Records Access <foil@gw.dec.state.ny.us>, public@gw.dec.state.ny.us

Cc: Kate Sinding <ksinding@nrdc.org>, Roger Downs <roger.downs@albany.twcbc.com>, Deborah Goldberg <dgoldberg@earthjustice.org>, David Slottje <dslottje@twcny.rr.com>, "Joe Heath, Esq" <jheath@atsny.com>, Dusty Horwitt <dusty@ewg.org>

Dear Eugene Leff, Deputy Commissioner:

I am writing to clarify that my January 11 request for inspection of records relating to the DEC's proposed HVHF regulations, which is purportedly acknowledged below, was NOT a FOIL request, but rather a request pursuant to the State Administrative Procedures Act § 104. I therefore reject any attempt by the DEC to reclassify my request as one under FOIL rather than SAPA.

The State Administrative Procedures Act provides a separate and independent basis for a records request, and the DEC's obligations under SAPA are different from (and independent of) the agency's obligations under FOIL.

SAPA § 104 clearly states: "1. An agency, upon request, shall, within thirty days, make available for inspection and copying any scientific or statistical study, report or analysis, including any such study, report or analysis prepared by a person or entity pursuant to a contract with the agency or funded in whole or in part through a grant from the agency that is used as the basis of a proposed rule and any supporting data; provided, however, that the agency shall provide for inspection only of any such study, report or analysis due to copyright restrictions."

I reiterate my request that the records I requested on January 11 (in the email copied below) be made available for inspection and copying within thirty days of the date of my first request.

Thank you very much. Please contact me if you have any further questions.

Helen Slottje, Esq.

Managing Attorney

Community Environmental Defense Council, Inc.

PO Box 898

Ithaca NY 14851

[607-277-5935](tel:607-277-5935)

[607-323-0505](tel:607-323-0505) (fax)

For your reference, here is a copy of my original correspondence on January 11, 2013:

Dear Euguene Leff, Deputy Commissioner:

In accordance with the DEC's statutory obligation under SAPA § 202(1)(iv) and its additional and separate obligation under the provisions of SAPA § 104, on behalf of Community Environmental Defense Council, Inc., I hereby request copies of any and all scientific or statistical studies, reports and analyses that served as the basis for the Revised Rule Making for High Volume Hydraulic-Fracturing rules noticed in the NYS Register of Rule Making Activities on December 12, 2012 (ID No. ENV-19-11-00020-RP); as well as copies of any and all of the scientific or statistical studies, reports and analyses that served as the basis for each and every part of the analysis set forth in the revised regulatory impact statement, the revised regulatory flexibility analysis, revised rural area flexibility analysis, and revised job impact statement, and assessment of public comment that were prepared and published in connection with said Notice of Revised Rule Making.

Thank you very much for your cooperation in this matter.

Helen Slottje, Esq.

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On Tue, Jan 22, 2013 at 2:07 PM, Records Access <foil@gw.dec.state.ny.us> wrote:

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January 26, 2013

Eugene Leff, Deputy Commissioner
New York Department of Environmental Conservation
625 Broadway
Albany NY 12233-0001

Dear Mr. Leff:

I am sending this letter in follow up to my January 25th email (attached) to ensure your receipt of the same. I am writing to clarify that my January 11 request for inspection of records relating to the DEC's proposed HVHF regulations, which is purportedly acknowledged via email (attached) was **NOT** a FOIL request, but rather a request pursuant to the State Administrative Procedures Act § 104. I therefore **reject** any attempt by the DEC to reclassify my request as one under FOIL rather than SAPA.

The State Administrative Procedures Act provides a separate and independent basis for a records request, and the DEC's obligations under SAPA are different from (and independent of) the agency's obligations under FOIL.

SAPA § 104 clearly states: "1. An agency, upon request, shall, within thirty days, make available for inspection and copying any scientific or statistical study, report or analysis, including any such study, report or analysis prepared by a person or entity pursuant to a contract with the agency or funded in whole or in part through a grant from the agency that is used as the basis of a proposed rule and any supporting data; provided, however, that the agency shall provide for inspection only of any such study, report or analysis due to copyright restrictions."

I reiterate my request that the records I requested on January 11 (in the email attached below) be made available for inspection and copying within thirty days of the date of my first request. Thank you very much. Please contact me if you have any further questions.

Sincerely,

Helen Slottje, Esq

Attachments