



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAY 29 2002

THE ADMINISTRATOR

The Honorable Barbara A. Mikulski  
Chair  
Subcommittee on VA, HUD, and Independent Agencies  
Committee on Appropriations  
Washington, DC 20510-5025

Dear Madam Chair:

Thank you for your letter dated April 30, 2002, following the April 19 VA-HUD Appropriations Subcommittee hearing on the issue of PCB contamination in Anniston, Alabama.

I share your concern about PCB contamination in Anniston. I have been briefed on the situation in Anniston and will continue to monitor our efforts to implement a comprehensive and timely cleanup strategy. Protecting the health of the community is a priority for me, and I have instructed my staff to ensure that EPA continues to take a leadership role. As you can see from the enclosed responses to the four questions raised in your correspondence, EPA's role and decisions have been consistent with protecting the public health and environment in Anniston.

Again, thank you for your letter. If I can be of further assistance, please contact me or have your staff contact Peter Pagano in the Office of Congressional and Intergovernmental Relations at (202) 564-3678.

Sincerely yours,

A handwritten signature in black ink, which appears to read "Christine Todd Whitman".

Christine Todd Whitman

Enclosures

**Q1: Why did the Administration appoint a Regional Administrator who had to be recused from one of the Region's most important environmental issues?**

This administration is firmly committed to appointing individuals who are highly qualified and who bring valuable experience and skills to their new responsibilities. In any administration, it is almost inevitable that recusal matters will arise for almost any qualified appointee given the breadth of experience that some appointees have. At EPA, for example, Regional Administrators and Assistant Administrators from previous administrations have had to recuse themselves from certain issues because of positions they held prior to coming to EPA.

In these situations, we are fortunate to have senior career officials serving as Deputy Regional Administrators and Deputy Assistant Administrators who are able to undertake these responsibilities. Deputy Regional and Assistant Administrators also serve as acting Regional Administrators and Assistant Administrators from time to time (for example, during presidential transitions) and are responsible on behalf of the Agency for many important matters.

An appointee's need to recuse himself or herself on any particular issue needs to be viewed in the context of the overall expertise and experience that individual brings to EPA. In Regional Administrator Jimmy Palmer's case, his extensive state government service and his expertise in environmental law and engineering make him well qualified to address the myriad of complex environmental challenges facing the Southeast. His recusal in this particular case was a result of his experience in private law practice representing foundries in Anniston whose interests could conflict with Solutia's in assigning responsibility for some of the contamination in the community. As such, he acted properly under both EPA Ethics Guidelines and the ethics rules of the Mississippi Bar in recusing himself from this matter.

**Q2: With two of the highest ranking EPA officials in the direct-decision making chain-of-command recused, who was the architect of the consent decree?**

As is typical with Superfund enforcement actions, EPA regional attorneys, technical staff and Department of Justice attorneys applied standard Superfund policies in negotiating the recently lodged Anniston Consent Decree. Routinely at Superfund sites, EPA regional attorneys and technical staff draft and negotiate agreements with responsible parties to have them undertake necessary response actions with EPA oversight. EPA front-line and mid-level regional management review, comment, and approve Superfund agreements. The authority to approve the commencement of a Remedial Investigation and Feasibility Study (RI/FS), like the one embodied in the lodged Anniston Consent Decree, is officially delegated to the regional branch chief level. Further, given the importance of the Anniston site to the Agency, Deputy Regional Administrator Stan Meiburg participated in the review, and ultimately approved the Consent Decree.

Since the Agency handles thousands of Superfund cleanups, delegation to officials with program expertise in the Region is essential. However, to ensure national consistency, all EPA Superfund settlements are based on national model documents. Typically, RI/FS agreements are negotiated by EPA administratively. Due to the degree of public interest in the Anniston site, however, EPA regional attorneys in consultation with regional program staff and the Department

of Justice determined that a judicial consent decree with a public comment period should be used. The Department of Justice was involved in the negotiations since they represent the United States in all judicial actions under Superfund.

**Q3: With a leadership void on the Anniston issue, who gave EPA's final approval for the Anniston consent decree?**

Since Anniston is such a serious environmental matter, regional staff repeatedly briefed and received approval from upper level regional management on all significant Anniston issues. EPA Headquarters' management and appropriate Department of Justice management were also regularly apprised of events at Anniston and consulted as needed. In Region 4, Deputy Regional Administrator Stan Meiburg approved all major decisions regarding the Consent Decree. Dr. Meiburg was also the Acting Regional Administrator from January 2001 to January 2002, when much of the Consent Decree was negotiated.

At EPA Headquarters, Marianne L. Horinko, the Assistant Administrator for the Office of Solid Waste and Emergency Response, was consulted. At the Department of Justice, Thomas L. Samsonetti, Assistant Attorney General for the Environment and Natural Resources Division was briefed and gave final approval for the lodging of the Consent Decree.

**Q4: Is it EPA's usual and customary process for a Deputy Regional Administrator to be the architect of and give final approval to a consent decree?**

In Region 4, the Regional Waste Management Division Director has the delegated authority for final EPA approval to sign a Superfund consent decree. The final delegated authority to refer an EPA-signed consent decree to the Department of Justice for lodging in federal court lies with the Regional Administrator. Both the signing and referral processes followed established procedures and were handled in the Anniston case in much the same way as in other Superfund consent decrees. The only difference was that in the Anniston case, the Deputy Regional Administrator signed the referral of the Consent Decree to the Department of Justice because the Regional Administrator is recused. Typically, neither the Regional Administrator nor the Deputy Regional Administrator are involved in the day-to-day negotiation and settlement of Superfund consent decrees because of the large number of Superfund cleanups and other issues that the Region handles.

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TERENCE E. SALUVAIN, STAFF DIRECTOR  
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April 30, 2002

The Honorable Christie Whitman  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Whitman:

I am writing to request your personal response to several puzzling questions left unanswered after the April 19 VA-HUD Appropriations Subcommittee hearing on the issue of PCB contamination in Anniston, Alabama.

I was very troubled to learn that several high ranking EPA officials have been recused from the Anniston issue because of previous ties to industry that they are supposed to regulate. Under EPA's management structure, Regional Administrators report directly to your office. But in the case of Anniston, both the Regional Administrator and your Deputy Administrator are recused. It is extremely troubling that a leadership void, created by potential conflicts of interest, left an issue of such extreme importance and urgency to be decided by a Deputy Regional Administrator.

The people of Anniston have a right to know, a right to be heard, and a right to be protected. As the Chair of EPA's funding Subcommittee, the hearing left me without confidence that the Environmental Protection Agency fulfilled its core mission to protect the people of Anniston. I therefore request your personal response to the following questions:

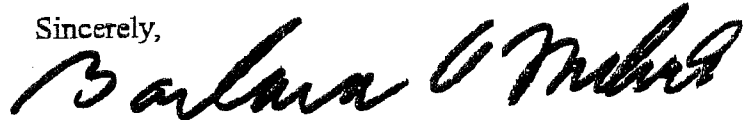
- Why did the Administration appoint a Regional Administrator who had to be recused from one of the Region's most important environmental issues?
- With two of the highest ranking EPA officials in the direct decision-making chain-of-command recused, who was the architect of the consent decree?
- With a leadership void on the Anniston issue, who gave EPA's final approval for the Anniston consent decree?
- Is it EPA's usual and customary process for a Deputy Regional Administrator to be the architect of and give final approval to a consent decree?

The Honorable Christie Whitman  
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I hope that your responses will provide confidence to the people of Anniston that EPA sought to protect their interests, instead of being mired in conflict of interest.

I look forward to receiving your prompt response.

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara A. Mikulski". The signature is fluid and cursive, with the first name "Barbara" being more prominent and the last name "Mikulski" following in a similar style.

Barbara A. Mikulski  
Chairman  
Subcommittee on VA, HUD,  
and Independent Agencies