



April 5, 2002

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Mr. Boling:

Re: FOIA Request for Meetings with Monsanto officials about Anniston, AL

Environmental Working Group ("EWG") is a § 501(c)(3) not-for profit watchdog organization that focuses on the environmental programs of the federal government. As a watchdog organization, EWG is engaged in public education and the review of the government's implementation of its statutory mandates. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, EWG seeks the following information from the Environmental Protection Agency:

- 1) Dates of meetings, lists of attendees, agendas, minutes of meetings, and correspondence, including letters, notes, emails, and memoranda, between Council on Environmental Quality ("CEQ") Chair James Laurence Connaughton and representatives or lobbyists of Monsanto, Inc., Solutia, Inc., or Pharmacia, Inc. (hereinafter collectively referred to as "Monsanto") about Anniston, Alabama from January 20, 2001 to the present.
- 2) Dates of meetings, agendas, lists of attendees, and minutes of meetings, and correspondence, including emails, letters, notes, and memoranda, between Administrator Whitman, Jessica Furey, Eileen McGinnis and/or any other official in the Office of the Administrator of the Environmental Protection Agency ("EPA") and CEQ Chair James Connaughton about Anniston, Alabama from January 20, 2001 to the present.
- 3) All dates of meetings, lists of attendees, agendas, minutes of meetings, and correspondence, including letters, notes, emails, and memoranda, among CEQ Chair James Connaughton and CEQ staff about Anniston, Alabama from January 20, 2001 to the present.
- 4) All dates of meetings, lists of attendees, minutes of meetings, and all correspondence, including emails, letters, notes, and memoranda, between CEQ Chair James Connaughton and Office of Management and Budget ("OMB") officials about Anniston, Alabama from January 20, 2001 to the present.

If you deny any part of this request, please cite each specific exemption that you believe justifies your refusal to release the information.

Environmental Working Group is a not-for profit § 501(c)(3) organization engaged in public education and the review of the government's implementation of its statutory mandates. EWG will use the requested documents to evaluate CEQ's involvement in the Administration's decision to enter into a "partial" consent decree with Monsanto and the overall administration of CERCLA. Therefore, EWG's request is consistent with the purposes of the Freedom of Information Act, namely citizens' right to know the actions of their government. As the Supreme Court noted, "official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose." *U.S. Department of Justice v. Reporters Committee for Freedom of the Press*, 109 S. Ct. 1468, 1481 (1989).

Pursuant to 5 U.S.C. § 552, EWG requests a fee waiver because the "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations of the government." See 5 U.S.C. § 552(a)(4)(A)(iii). Furthermore, fee waivers are most likely to be warranted when, as here, the records requested are for a public interest watchdog group and the information primarily benefits the public as opposed to the requester. See, e.g., *Better Gov't Ass'n v. Department of State*, 788 F.2d 86, 88-89 (D.C. Cir. 1986)(fee waivers intended to benefit public interest watchdogs). EWG's request for a fee waiver should be granted because this request squarely fits into the six factors outlined in the Department of Justice Freedom of Information Act Guide to determine whether fee waivers are appropriate. See U.S. Department of Justice, Freedom of Information Act Guide & Privacy Act Overview 502 (May 2000 Edition).

1) The Subject Matter of Requested Records Concerns Identifiable Operations.

First, the subject matter of the requested records concerns identifiable operations or activities of the government. Monsanto's contamination of Anniston, Alabama is a high-profile and a controversial EPA issue. See, e.g., Michael Grunwald, "Proposed Settlement in PCB Case Denounced," *The Washington Post* (Mar. 24, 2002). The CEQ coordinates federal environmental efforts and works closely with agencies and other White House offices in the development of environmental policies and initiatives. The Council's Chair, who is appointed by the President with the advice and consent of the Senate, serves as the principal environmental policy adviser to the President. Industry lobbyists routinely contact CEQ about EPA's evaluation of the health impacts of PCBs and the Administration's Superfund policies. Notably, former Chair Connaughton was a lobbyist for General Electric and is considered by many to be an expert on Superfund policy. Thus, Mr. Connaughton's involvement in this high-profile Superfund case should be reflected in easily identifiable records. Furthermore, correspondence with industry lobbyists and representatives should be easily identifiable in the CEQ's files. Likewise, the CEQ's involvement in the Administration's decision to enter into a "partial" consent decree after a jury verdict in a state civil trial should be reflected in internal CEQ memoranda, letters, emails, and notes, because CEQ coordinates federal environmental policy.

2) The Releasable Material is "Meaningfully Informative."

Second, the releasable material is meaningfully informative in relation to the subject matter of the request. The subject matter in this request is CEQ's meetings with Monsanto representatives about Anniston, Alabama, and CEQ's meetings with EPA and OMB officials about Anniston. Disclosure of what Monsanto communications CEQ received and how CEQ evaluated Monsanto's statements is meaningfully informative on how the Superfund program works. Release of the correspondence, communication, and meeting notes between CEQ and EPA would allow EWG and the public to evaluate the Administration's decision to approve a consent decree with Monsanto. Release of communications among CEQ, OMB, and EPA concerning this high-profile issue will bring a critical insight into the Government's implementation of Superfund and its environmental mandates.

3) The Disclosure will contribute to the Understanding of the Public at Large.

Third, the disclosure will contribute to the understanding of the public at large because EWG, through its cutting-edge research reports, has and will continue to disseminate information broadly to the public. The public at large is very concerned about the health effects of PCBs in our air, water, soil, and our blood. EWG plans to independently evaluate the correspondence between EPA, OMB, CEQ, and Monsanto representatives to examine the timing of EPA's decision to enter into a consent decree with Monsanto. Specifically, EWG plans to evaluate CEQ's consideration of the health risks of PCBs and CEQ's overall involvement in this controversial issue. EWG plans to disseminate its findings to a large range of media outlets, public citizens' groups, and other activists.

EWG is qualified to digest these communications about Monsanto's influence on CEQ as evidenced in its groundbreaking report *PCBs: Pollution, Contamination & Betrayal*. This report was one of the first reports in the country to expose how Monsanto, the only manufacturer of PCBs in the United States, knew of the health risks of PCBs since the late 1930s. Other EWG reports have been widely distributed in newspaper articles in *The Washington Post*, *New York Times*, *The Boston Globe*, and *The L.A. Times*, and hundreds of local media outlets. As demonstrated from our past experiences, information released from EWG FOIA requests often results in dynamic, well-researched, high-impact reports and effective public education programs. Thus, release of the information in this FOIA request will contribute to the understanding of the public at large about the Administration's timing of an approval of a "partial" consent decree with Monsanto, on the heels of state trial jury verdict establishing liability against Monsanto. This FOIA will ensure that the Administration's controversial decision to cut a sweetheart deal with a powerful polluter and interfere in a state toxic tort trial is not hidden from the public.

4) The Disclosure will Contribute Significantly to Public Understanding of Government Operations.

Fourth, the disclosure will contribute significantly to public understanding of government operations or activities in that this information will show the public how CEQ works in coordinating federal environmental policy. As a government watchdog

organization, EWG will use the requested information to show the public how CEQ administers environmental policy and how industry may influence environmental clean up decisions.

5) This Disclosure Will Not Serve EWG's Commercial Interest.

Fifth, this disclosure will not serve EWG's commercial interest, since EWG is a 501(c)(3) nonprofit organization.

6) The Identified Public Interest Clearly Outweighs EWG's Commercial Interest.

Sixth, the identified public interest of awareness about Monsanto's meetings with CEQ officials outweighs EWG's commercial interest because 1) this issue is of critical importance to public health and safety of the Anniston community; and 2) EWG has no commercial interest in the information.

This request clearly meets the six factors for a fee waiver and EWG therefore requests that CEQ waive all fees in connection to the request. In the event that fees are not waived, I ask that you notify me and subsequently inform me of the basis for such a decision.

I look forward to your prompt response to this request. If you have any questions with respect to this request, please contact me at (202) 667-6982.

Sincerely,



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