



April 4, 2002

Agency Freedom of Information Officer  
Office of Management and Budget  
725 17th Street NW, Washington, DC 20503

**VIA OVERNIGHT MAIL**

To Whom It May Concern:

**Re:    *FOIA Request Regarding Meetings with OMB officials and  
Monsanto Lobbyists 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) All dates of meetings, lists of attendees, agendas, and minutes of meetings, and all correspondence, including memoranda, letters, notes, and emails, between Office of Management and Budget ("OMB") officials and representatives of or lobbyists for Monsanto, Inc., Pharmcia, Inc., or Solutia, Inc. (hereafter collectively referred to as "Monsanto") about Anniston, Alabama from January 20, 2001 to the present.
- 2) All dates of meetings, lists of attendees, agendas, and minutes of meetings, and all correspondence, including memoranda, letters, notes, and emails, among Environmental Protection Agency ("EPA") Administrator Christine Todd Whitman, and/or Jessica Furey, and/or Eileen McGinnis and/or Steve Ramsey and OMB officials about Anniston, Alabama from January 20, 2001 to the present.
- 3) All dates of internal OMB meetings, lists of attendees, agendas, and minutes of meetings, and all internal OMB correspondence, including memoranda, letters, notes, and email, about Anniston, Alabama from January 20, 2001 to present.
- 4) All dates of meetings, lists of attendees, agendas, and minutes of meetings, and all correspondence, including memoranda, letters, emails, and notes between OMB officials and CEQ officials about Anniston, Alabama from January 20, 2001 to 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 ("EWG") 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 the Administration's implementation of the Superfund Program and the overall effectiveness of the Administration's environmental policies. 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); *see also* OMB FOIA Regs. § 1303.70 (2002). 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). The Environmental Working Group'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. The Administration's recent approval of a consent decree with Monsanto for its contamination of Anniston, Alabama is a high-profile, controversial issue. *See, e.g., Michael Grunwald, "Proposed Settlement in PCB Case Denounced," The Washington Post* (Mar. 24, 2002). The subject matter of the request involves OMB's meetings with Monsanto lobbyists, CEQ, and EPA about the PCB contamination and clean up of Anniston, Alabama. The general functions of the Office of Management and Budget, as provided by statute and executive order, are to develop and execute the budget, oversee implementation of Administration policies and programs, advise and assist the President, and develop and implement management policies for the government. In addition, OMB's Resource Management Offices serve to develop and support the President's management and budget agenda in the areas of Natural Resources, Energy and Science, National Security and International Affairs, Health and Personnel, Human Resources, and General Government and Finance. Thus, OMB's involvement in the Anniston, Alabama case and the implementation of the Administration's environmental policies concerns an easily identifiable operation of OMB. In addition, industry lobbyists routinely contact OMB about Superfund policy

and specific sites. Correspondence and information related to meetings with industry lobbyists and representatives should be easily identifiable in the OMB's records. Furthermore, OMB's involvement in the Administration's decision to enter into a consent decree with Monsanto after a jury verdict in a state civil trial should be reflected in internal OMB memoranda, letters, emails, and notes, because oversight and implementation of the Administration's environmental policy is an important responsibility of OMB.

**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 includes OMB's meetings with Monsanto officials and OMB's overall involvement in the Anniston case. Release of the correspondence, communication, and meeting notes between OMB and Monsanto representatives would allow EWG and the public to evaluate the Administration's reasoning for the timing of its approval of the consent decree and for its decision to abandon the original, tougher settlement request with Monsanto. Disclosure of what Monsanto communications OMB received and how OMB evaluated Monsanto's statements is meaningfully informative on how the Administration implements the Superfund program. Internal OMB communications and OMB's communications with CEQ and EPA will also help EWG evaluate the overall effectiveness of the Administration'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 meetings and correspondence between OMB and Monsanto representatives to determine the circumstances surrounding the Administration's decision to settle with Monsanto only three weeks after a state court jury verdict against Monsanto. Specifically, EWG plans to evaluate the Administration's overall implementation of Superfund, the Administration's evaluation of the health risks of PCBs, and the Administration's overall consideration of 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 the Administration, 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. EWG's public education campaigns involve solid scientific analysis, media outreach, and grassroots activism. 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 approval and involvement in the Anniston, Alabama situation. The information will also shed light on the Administration's decision to approve a settlement agreement with Monsanto only three weeks after a state civil court trial jury verdict establishing liability for Monsanto.

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 the Administration implements Superfund, how Monsanto representatives may have influenced the Administration to announce its Consent Decree three weeks after the jury verdict in the state trial, and why the Administration agreed not to list the site on the Superfund National Priorities List. As a government watchdog organization, EWG will use the requested information to show the public how industry can cut a deal with the Administration at a community's expense.

**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 insight into how Monsanto might have influenced the Administration with respect to the Anniston clean up outweighs EWG's commercial interest because 1) this issue is of critical importance to public health and safety to the people of Anniston; 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 OMB 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,

A handwritten signature in cursive script that reads "Heather Brandeis White".

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