



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

Received on 1/9/03
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JAN 2 2003

OFFICE OF
GENERAL COUNSEL

Heather Brandeis White, Esq.
General Counsel
Environmental Working Group
1718 Connecticut Avenue, N.W.
Suite 600
Washington, D.C. 20001

Re: Freedom of Information Act Appeal HQ-RIN-01332-02-A

Dear Ms. White:

I am responding to your July 26, 2002 Freedom of Information Act ("FOIA") appeal. You appealed the June 18, 2002 decision of Ray E. Spears, Deputy Chief of Staff, Office of the Administrator, ("decision") of the U.S. Environmental Protection Agency ("EPA" or "Agency"), to deny in part the request you submitted to EPA on April 4, 2002. Your request sought documents pertaining to Monsanto and the Anniston, Alabama consent decree. The decision stated that your request was denied in part because the documents were exempt from disclosure under Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5).

I have carefully considered your request, EPA's decision, and your appeal. For the reasons set forth below, I have determined that your appeal should be, and is, granted in part and denied in part.

Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5), protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." The documents and portions of documents that were withheld under Exemption 5 of the FOIA are exempt from disclosure because they are inter-agency or intra-agency memoranda or letters generated by EPA employees and because the documents contain information that is protected by the deliberative process privilege.

Exemption 5 of the FOIA protects from disclosure a record, or portion of a record, that is subject to the deliberative process privilege. The deliberative process privilege protects documents that are both predecisional and deliberative. The withheld documents and portions of

Heather Brandeis White, Esq.
FOIA Appeal HQ-RIN-01332-02-A
Page 2

documents or are protected by the deliberative process privilege because they reflect the internal discussions, advice, analysis, and recommendations that were considered during EPA's decision-making process. Release of the withheld material would discourage open, frank discussions on matters of policy between subordinates and superiors, prematurely disclose proposed policies before they are finally adopted, cause public confusion by disclosing reasons and rationales that were not in fact ultimately the grounds for EPA's action. Therefore, I have determined that the withheld material is exempt from disclosure under Exemption 5 of the FOIA.

I have determined that portions of documents contain reasonably segregable information that may be released. A copy of that material is enclosed. I have further determined that there is no other reasonably segregable nonexempt information in the documents.¹

This letter constitutes EPA's final determination on your appeal. In accordance with 5 U.S.C. § 552(a)(4)(B), you have the right to seek judicial review of this determination by instituting an action in the district court of the United States in the district in which you reside, or have your principal place of business, or in which the Agency records are situated, or in the District of Columbia.

Sincerely,



Patricia K. Hirsch
Assistant General Counsel
Finance and Operations Law Office

Enclosures

cc: Betty Lopez, HQ FOI Office
Ray E. Spears, Deputy Chief of Staff, AO

¹ Certain enclosed documents have detailed notations on them where information has been withheld under FOIA. All blank areas on the enclosed documents showing no such notations contain information that is not responsive to your FOIA request.



Rafael Gonzalez

01/18/02 01:21 PM

To:

cc: OERR Hot Sites, Michael Hurd/DC/USEPA/US@EPA, Ed
Cayous/DC/USEPA/US@EPA, Randy
Hippen/DC/USEPA/US@EPA, Matthew
Charsky/DC/USEPA/US@EPA, Terri
Johnson/DC/USEPA/US@EPA, Joan Fisk/DC/USEPA/US@EPA,
Larry Zaragoza/DC/USEPA/US@EPA, Stephen
Caldwell/DC/USEPA/US@EPA, Leah Evison/DC/USEPA/US@EPA,
Carolyn Hoskinson/DC/USEPA/US@EPA, Marjorie
Buckholtz/DC/USEPA/US@EPA

Subject: OERR HotSites & GoodNews - January 18, 2002

**Office of Emergency and Remedial Response
Hot Issues/Sites & Good News - January 18, 2002**

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Region 4 Solutia/Anniston, AL

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USE LAUNCH TO READ



HotSitesGoodNwsJan_18_02.wj PreviousReport.wpc

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Hot Issues/Sites & Good News - January 18, 2002**

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Solutia/Anniston Site, Anniston, AL

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- **Hot Issue:** EPA and the Alabama Department of Environmental Management (ADEM) have discovered PCB and lead contamination on the Solutia site and in residential properties and surface water pathways surrounding the Solutia, Inc. facility in Anniston, Alabama. Cleanup activities are being pursued under both RCRA and Superfund authorities, and there is both a high degree of community interest and high-profile private party litigation involving the site. In addition, during the sampling for PCBs, high lead levels were discovered at some of the affected residential properties. Anniston involves a wide number of programs and interest groups.
- **Background:** The wide scope of programs and activities in the Anniston area include: CERCLA - Removal (PCB and Lead); CERCLA Removal (PCB) will continue to work with Solutia on remediation. Currently, there are 19 residential properties which exceed 10 ppm. Work on gaining access to all of these 19 properties (and any additional properties identified in the future) will continue in FY2002. Non residential PCB contamination will also be addressed. CERCLA Removal (lead) will work on 10 removals at residential properties in FY2002. Because the geographic area covered by the "Lead Site" is basically equivalent to the area covered by the "PCB Site," lead removals face the similar problems with gaining access for cleanup. Work in FY2002 will include efforts to gain access to properties for lead cleanup.
- CERCLA - Remedial; The Superfund Remedial Program plans to finish negotiations with the PRP on the RI/FS Consent Decree. Hopefully, the negotiations will be completed by mid-February, 2002. The Remedial Program will then begin work on the RI/FS, first with the work plan and then other planning documents. The Remedial Program may begin actual RI/FS work before the end of the fiscal year.
- The Superfund Remedial Program will work with the Superfund Removal Program on the Anniston lead site, as necessary. (OERR Contact: Joan Fisk, 603-8791)

Jan Baker

02/01/02 02:58 PM

To:

cc: OERR Hot Sites

Subject: Revised: OERR Hot Issues/Sites & Good News - February 1, 2002

Excuse me, I moved the State of Oklahoma to the wrong part of the country. Corrected version follows.

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**Office of Emergency and Remedial Response
Hot Issues/Sites & Good News - February 1, 2002**

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HotSites Feb01 02.wpd



PreviousReport.wpd

Peter Pagano

04/12/02 01:36 PM

To: WendyJ Miller/DC/USEPA/US@EPA, Gayle Rice/DC/USEPA/US@EPA, Dennis Deziel/DC/USEPA/US@EPA, James Nelson/DC/USEPA/US@EPA
cc: Douglas Parsons/DC/USEPA/US@EPA, Charlotte Bertrand/DC/USEPA/US@EPA, Randy Deitz/DC/USEPA/US@EPA, Susan Bromm/DC/USEPA/US@EPA, Helena Healy/DC/USEPA/US@EPA, Carolyn Dick/DC/USEPA/US@EPA, Michele Mckeever/DC/USEPA/US@EPA, Betsy Henry/DC/USEPA/US@EPA, James McDonald/DC/USEPA/US@EPA, Ed Krenik/DC/USEPA/US@EPA, Delia Scott/DC/USEPA/US@EPA, Joe Martyak/DC/USEPA/US@EPA, Reynold Meni/DC/USEPA/US@EPA

Subject: Draft Testimony on PCB Site in Anniston

Attached for your review and comment is the draft testimony for next week's Senate hearing on the PCB disposal site in Anniston. Please forward any comments to my attention no later than 4:00pm on Monday, April 15. If I do not hear from you, I will assume you have no comments. Should you need to speak with me I can be reached at 564-3678. Thanks for your assistance.



anniston.wpd

[Handwritten note in a box:]
Draft testimony on PCB site in Anniston
ASD/DC/USEPA/US@EPA

**ADMINISTRATOR'S BRIEFING
WEDNESDAY, MARCH 6, 2002**

REGION 4 BRIEFING ON ANNISTON
12+ attendees/closed press
Duration: 45 minutes (10:10 - 10:55 am)

GENESIS: You requested this briefing

OVERVIEW: Provide background information on the Anniston PCB site.

Attendees:

Region IV

Stan Meiburg	Deputy Regional Administrator
Phyllis Harris	Regional Counsel
Dick Green	Waste Division Director
Don Rigger	Removal Operations Section Chief
Richard Leahy	CERCLA Legal Office Chief

DOJ representative

Headquarters

Marianne Horinko
Eileen McGinnis
Ed Krenik
Joe Martyak
Jessica Furey
Bob Fabricant

Agenda Summary:

Region 4 staff will provide a briefing on the status of the Anniston PCB site.

Key Issues:

u/h: Ely S. ...

Background:

Interest in the situation has been heightened by extensive media coverage and by efforts

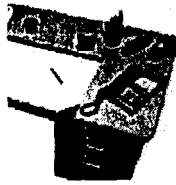
to compare the situation with the Hudson River.

List of Attachments:

- Briefing document
- Congressional Inquiry
- Recent articles

EPA Staff Contacts: Stan Meiburg 404 562 8357
Dick Green 404 564 8651
Phyllis Harris 404 564 9655

with attached 2 pg briefing document
Ex 3 - Det. Time



Jan Baker

02/08/02 01:35 PM

To:
cc: OERR Hot Sites, Matthew Charsky/DC/USEPA/US@EPA, Shahid
Mahmud/DC/USEPA/US@EPA, Dana
Stalcup/DC/USEPA/US@EPA, Joan Fisk/DC/USEPA/US@EPA,
Dan Thornton/DC/USEPA/US@EPA
Subject: OERR Hot Sites & Good News Report for February 8, 2002

**Office of Emergency and Remedial Response
Hot Issues/Sites & Good News - February 8, 2002**

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Feb 8 HotSitesReport.wpd PreviousReport.wpd

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Hot Issues/Sites & Good News - February 8, 2002**

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Anniston PCB Site - Anniston, Alabama

- **Current Status:** EPA is presently negotiating a Consent Decree with Solutia and Pharmacia (formerly Monsanto) that will be lodged and entered in a Federal District Court.
- The Consent Decree will require that Solutia/Pharmacia undertake a major study and evaluation of the PCB contamination in Anniston following the comprehensive and strict requirements of the federal Superfund process.
- The community will have the opportunity to comment on the Consent Decree after it is lodged in Federal District Court.
- The comprehensive study will evaluate the extent of the contamination, the risks it poses, and the final clean up options that will be overseen by EPA.
- Following completion of the comprehensive study, EPA will select a final remedy after a public input process. Then, a Consent Decree with Solutia/Pharmacia will be initiated by EPA to implement the final remedy which would also involve oversight by EPA. The work would include designing, constructing and operating the selected remedy.
- If EPA and Solutia/Pharmacia are not able to reach agreement in the near future regarding the comprehensive study, then EPA may propose listing the site on the National Priorities List, perform the study itself, and seek reimbursement from Solutia/Pharmacia.
- Under EPA authority, Solutia continues to sample within the zones indicated in the AOC to identify PCB contamination. Twenty-two residential properties, greater than or equal to 10 parts per million (ppm) PCBs, have been identified for removal actions to address short-term risks. Cleanup of most of these properties was delayed due to access issues which appear to be resolved. EPA expects these properties will be addressed in the near

future.

- **Background:** The Solutia facility in Amniston, Alabama, is one of two facilities in the United States that produced PCBs (Aroclors). PCB production ceased in 1971 in Amniston. The Solutia Amniston plant occupies 70 acres of land, about 1 mile west of downtown Amniston. The site is bounded to the north by the Norfolk Southern and Erie railroads, east and west by residential properties, and south by U.S. Highway 202. The Solutia facility includes two landfills which received PCB waste material.
- The facility is regulated under the Alabama Hazardous Waste Management and Minimization Act (HWMMA). EPA has authorized the Alabama Department of Environmental Management (ADEM) to implement the Resource Conservation and Recovery Act (RCRA) through the HWMMA in lieu of the federal RCRA program. Through investigations initiated under the RCRA program, EPA and ADEM have determined that the Solutia facility, the adjacent community, and the drainage ditches exiting the property as well as the downstream waterways (Snow Creek, Choccolocco Creek, and the Coosa River-Lake Logan Martin) are contaminated with PCBs.
- Solutia has conducted investigations of the facility and adjacent community and has instituted interim measures toward eliminating further releases and minimizing human exposure. The company is currently investigating the downstream waterways to assess the human health and environmental impacts in these areas.
- In July 1999, ADEM and the EPA RCRA program requested involvement by EPA's Emergency Response and Removal Branch (ERRB) to conduct a time critical investigation of the Amniston Site. The EPA Region 4 ERRB is performing an ongoing removal assessment of the soil contamination at the Amniston Site.
- Since February 2000, EPA has conducted numerous sampling events for residential, public, and commercial areas around the Solutia facility. EPA has also conducted availability sessions to interpret sampling results for property owners.
- In October 2000, Solutia entered into an Administrative Order on Consent (AOC) with EPA to sample properties in west Amniston for PCB contamination. Under the order, Solutia must address any property where PCBs are found at a level that could cause short-term health concerns. This work is being done with close supervision by EPA.
- In October 2001, EPA and Solutia entered into a revised AOC expanding the physical area of sampling and remediation from the October 2000 AOC.
- In May 2001, EPA's Environmental Response Team released a final report on its evaluation of potential PCB releases from the Solutia facility, including two landfills on plant property which have been of great concern to the community. The report indicates several areas where additional study and/or work is recommended to ensure that the facility is not an ongoing source of PCBs. EPA and ADEM are presently working to reach consensus on how to implement the recommendations.
- The Agency for Toxic Substance and Disease Registry (ATSDR) and the Alabama Department of Public Health have conducted several exposure investigations and health consultations. OERR Contact: Joan Fisk 703/603-8791

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**Office of Emergency and Remedial Response
Hot Issues/Sites & Good News - February 1, 2002**

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Region 4

Anniston PCB Site, Anniston, Alabama

- **Current Status:** *Solutia, under EPA authority, continues to sample within the zones indicated in the AOC to identify PCB contamination.*
- *Twenty-two residential properties, greater than or equal to 10 parts per million (ppm) PCBs, have been identified for removal actions to address short-term risks.*
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- *EPA is presently negotiating a Consent Decree with Solutia and Pharmacia (formerly Monsanto) that will be lodged and entered in a Federal District Court. The Consent Decree will require that Solutia/Pharmacia undertake a major study and evaluation of the PCB contamination in Anniston following the comprehensive and strict requirements of the federal Superfund process.*
- *The community will have the opportunity to comment on the Consent Decree after it is*

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- *If EPA and Solutia/Pharmacia are not able to reach agreement in the near future regarding the comprehensive study, then EPA may propose listing the site on the National Priorities List, perform the study itself, and seek reimbursement from Solutia/Pharmacia.*
- **Background:** The Anniston Polychlorinated Biphenyl (PCB) Site consists of residential and commercial properties located in and around Anniston, Calhoun County, Alabama.
- The Site is being investigated for PCBs and other contaminants by the U.S. Environmental Protection Agency (EPA).
- Previous site investigations by the Alabama Department of Public Health (ADPH), the Alabama Department of Environmental Management (ADEM), the Agency for Toxic Substances and Disease Registry (ATSDR), and EPA Region 4 have determined that PCB contamination is evident in the Anniston area.
- The Solutia facility in Anniston, Alabama, is one of two facilities in the United States that produced PCBs (Aroclors). PCB production ceased in 1971 in Anniston. The Solutia Anniston plant occupies 70 acres of land, about 1 mile west of downtown Anniston. The site is bounded to the north by the Norfolk Southern and Erie railroads, east and west by residential properties, and south by U.S. Highway 202. The Solutia facility includes two landfills which received PCB waste material. The facility is regulated under the Alabama Hazardous Waste Management and Minimization Act (HWMMA).
- EPA has authorized ADEM to implement the Resource Conservation and Recovery Act (RCRA) through the HWMMA in lieu of the federal RCRA program.
- Through investigations initiated under the RCRA program, EPA and ADEM have determined that the Solutia facility, the adjacent community, and the drainage ditches exiting the property as well as the downstream waterways (Snow Creek, Choccolocco Creek, and the Coosa River-Lake Logan Martin) are contaminated with PCBs.
- Solutia has conducted investigations of the facility and adjacent community and has instituted interim measures toward eliminating further releases and minimizing human exposure. The company is currently investigating the downstream waterways to assess the human health and environmental impacts in these areas.
- In July 1999, ADEM and the EPA RCRA program requested involvement by EPA's Emergency Response and Removal Branch (ERRB) to conduct a time critical investigation of the Anniston Site. The EPA Region 4 ERRB is performing an ongoing removal assessment of the soil contamination at the Anniston Site.
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Reynold Meni

04/16/02 09:57 AM

To: WendyJ Miller/DC/USEPA/US@EPA, Gayle
 Rice/DC/USEPA/US@EPA, Dennis Deziel/DC/USEPA/US@EPA,
 James Nelson/DC/USEPA/US@EPA, Becky
 Hendrix/R4/USEPA/US@EPA, Allison Wise/R4/USEPA/US@EPA,
 Charlotte Bertrand/DC/USEPA/US@EPA, Kristi
 Watkins/R4/USEPA/US@EPA, Stan Meiburg/R4/USEPA/US@EPA
 cc: Betsy Henry/DC/USEPA/US@EPA, Randy
 Deitz/DC/USEPA/US@EPA, Carolyn Dick/DC/USEPA/US@EPA,
 Helena Healy/DC/USEPA/US@EPA, Michele
 McKeever/DC/USEPA/US@EPA
 Subject: HHS Testimony on PCB contamination in Anniston, Alabama

Attached for your review and comment is ATSDR's testimony for Friday's hearing on PCBs in Anniston, Alabama. Please provide comments by 5:00 pm, today, Tuesday, April 16. If you do not respond, we will assume that you have no comments. Should you need to speak with me I can be reached at 564-3669. Thanks.



Draft ATSDR Anniston Testimony.w

[Faint, illegible text, possibly bleed-through from the reverse side of the page]

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Anniston PCB Site, Anniston, Alabama

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