



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

Received 7/31/02  
by JBLW

Heather White, Esq.  
General Counsel  
Environmental Working Group  
Suite 600  
1718 Connecticut Avenue, NW  
Washington, D.C. 20009

JUL 24 2002

OFFICE OF THE  
ADMINISTRATOR

Dear Ms. White:

This is to confirm our telephone discussion of July 18, 2002 regarding questions you posed on the recusal of Linda Fisher, Deputy Administrator, regarding the "partial" consent decree in the matter of the Anniston, Alabama PCB site.

Specifically, you ask whether Ms. Fisher was involved in any way in negotiating the consent decree with Monsanto regarding the company's conduct in Alabama. I indicated to you that Ms. Fisher had no involvement in this matter. I stated that on May 1, 2001, Ms. Fisher filed with the EPA Designated Agency Ethic Official a general recusal setting forth the steps she was taking to comply with the prohibitions of 18 U.S.C. § 208(a) which bar federal employees from participating "personally and substantially" in any "particular matter" which affects their financial interests. Attachment A. In this document, Ms Fisher indicated that there was a continuing financial relationship with Pharmacia Inc., a successor to Monsanto. She indicated she would not participate in any particular matter involving Pharmacia or its subsidiaries as a specific party or a representative of a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question her impartiality in the matter. Further, she stated that upon confirmation she would issue directions to her staff that matters involving Pharmacia and its subsidiaries not be referred to her and that they be decided by the Administrator or the Assistant Administrator with subject matter responsibility. It is my understanding that such instructions were issued and that matters concerning Pharmacia and its subsidiaries were not referred to Ms. Fisher's attention.

Ms. Fisher was required by her ethics agreement to divest the various financial interests set forth in the Appendix to the agreement by November 21, 2001. Ms. Fisher complied with this requirement. Therefore, by memorandum dated December 21, 2001, the Designated Agency Ethics Official determined that Ms. Fisher's remaining interest in Pharmacia was "not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect" and thereby granted a waiver under 18 U.S.C. §208(b)(1) which allowed her participation in matter which affect Pharmacia. Attachment B. However, by memorandum dated February 4, 2002, Ms. Fisher confirmed that while she intended to use the waiver to participate in general

policy matters that may affect Pharmacia as well as other companies in its sector, she nonetheless would continue to remain recused from particular matters that affect Pharmacia and its subsidiary Monsanto and Solutia. Attachment C. Ms. Fisher stated that she was taking this action to avoid even the appearance of any conflict. Accordingly, since Ms. Fisher has not been involved in any "particular matter" concerning Pharmacia and its subsidiaries Monsanto and Solutia, there are no documents responsive to your request for "[d]ates of meetings, agendas, lists of attendees, and minutes of meetings and all correspondence, including letters, notes, e-mails, and memoranda, concerning Deputy Administrator Linda Fisher's decision to recuse herself from considering the Anniston, Alabama consent decree from January 20, 2001 to the present."

Lastly, you ask whether responsive documents have been withheld under the deliberative process exception of the Freedom of Information Act. As stated in my letter to you of June 18, 2002, we have withheld from disclosure under this exception documents which are in draft form and which are internal agency communications.

I trust that this fully clarifies the issues you raise. Please contact me at (202) 564-4715 if you wish to discuss any aspect of this letter.

Sincerely,



Ray E. Spears  
Deputy Chief of Staff

cc: Linda Fisher, Deputy Administrator  
Anna Wolgast, Principal Deputy General Counsel  
and Designated Agency Ethics Official

***ATTACHMENT A***

MAY 1 2001

Anna L. Wolgast  
Acting General Counsel and  
Designated Agency Ethics Official  
U.S. Environmental Protection Agency (2310)  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Ms. Wolgast:

The purpose of this letter is to describe the steps that I will take to avoid conflict of interest or loss of impartiality if I am confirmed and appointed as Deputy Administrator of the U.S. Environmental Protection Agency (EPA). These steps are as follows:

Consistent with the prohibitions of 18 U.S.C. § 208(a), unless I first obtain a written waiver under section 208(b)(1) or I qualify for a regulatory exemption under section 208(b)(2), I will not participate personally and substantially in any particular matter in which I have, or any person or organization whose interests are imputed to me has, a financial interest, if the particular matter will have a direct and predictable effect on the financial interest. Certain of my financial interests have been determined to pose potential conflicts under section 208, and I will resolve any such potential conflicts in the following ways:

As to my stock interests listed in Appendix A to this letter, I will divest my interest within three months of my Senate confirmation. Until I divest these interests, unless the value of my holdings in such publicly traded stocks is within the individual and aggregate "minimal value" exemptions under 18 U.S.C. § 208(b)(2), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on said interests unless I obtain a waiver under section 208(b)(1).

As to my interests in municipal bonds listed on pages 33 through 37 of my SF 278 Financial Disclosure Form, unless I obtain a waiver under section 208(b)(1) or qualify for a regulatory exemption, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of the entities listed to honor their bond obligations.

With respect to all other assets reported on schedule A of my SF 278 Financial Disclosure Report or other assets that I may acquire in the future, I will continuously monitor my holdings and I will not participate personally and substantially in any particular matter that has a direct and

predictable effect on said interests unless I obtain a waiver under section 208(b)(1) or qualify for a regulatory exemption.

Although I terminated my employment with Pharmacia Inc. in July 2000, I continue to have the following ongoing financial relationships with the company: a loan pursuant to an executive stock purchase plan entered into June 1998 to be paid off upon sale of my Pharmacia stock holdings; a deferred salary pension plan; several deferred salary interest bearing cash accounts managed by Pharmacia; and, ongoing life, health and disability insurance pursuant to an employment agreement entered into prior to being considered for a government position. Therefore, as long as these financial relationships continue, consistent with the requirements of 5 C.F.R. Part 2635, subpart E, I will not participate in any particular matter involving Pharmacia or its subsidiaries as a specific party or a representative of a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question my impartiality in the matter, unless my participation is specifically authorized pursuant to section 2635.502(d).

If confirmed and appointed as Deputy Administrator, I will issue directions to my staff that such matters are not to be referred to me and are to be decided by the Administrator or the Assistant Administrator with subject matter responsibility for the matter, without my participation.

Finally, I understand that my obligation to comply with ethics laws and regulations is ongoing and will require vigilance regarding any changes in my financial interests, the financial interests of persons and organizations imputed to me under the ethics laws and regulations, and other outside interests. I will keep the Agency's ethics officials informed about any new or changing interests and will take all appropriate steps to avoid or remedy potential conflicts.

Sincerely,

  
Linda Fisher

Appendix A to Linda Fisher's Ethics Agreement – Stock interests that will be divested

Abbott Labs  
ABN-Amro Holding Nv ADR  
Advanced Micro D Inc.  
Aegon N V Amer Reg  
Aes Corporation  
Alcoa  
Allegheny Energy Inc Com  
Alza Corp Del Com  
Amer Home Products  
Amer Intl Group Inc  
Amgen Inc Com Pv  
Anadarko Pete Corp  
Andrx Group Delaware Com  
Anheusr Busch Cos Inc  
Applera CP – Appl Biosys G  
Applied Micro Circuits  
Astrazeneca PLC Spnd Adr  
AT&T Corp Wireless Group  
Avaya Inc. Com  
Aventis Spon Adr  
Axa Amern Depshs SPD  
Baker Hughes Inc.  
Bank of NY Co. Inc.  
Baxter Interntl Inc.  
Boeing Company  
BP Amoco PLC Sponsrd  
Bristol Myers Squibb Co  
Cabot Corp  
Calpine Corp  
Capital One Finl  
Caremark RX Inc.  
Caterpillar Inc. Del  
Chevron Corp.  
Cigna Corp.  
Citigroup Inc.  
Conoco Inc Cl B  
Corning Inc.  
Credence Systems Corp  
Danaher Corp Del Com

Dow Chemicals Pv 2 50  
Dynergy Inc New Ill CLA  
Eastman Chemical Co Com  
Eaton Corp.  
Elan Corp PLC Adr  
Endesa S.A. Sponsord Adr  
Eni S P A Sponsord Adr  
Enron Corp Oregon NPV  
Eog Resources Inc.  
Exxon Mobile Corp Com  
Forest Labs Inc.  
General Electric  
General Mills  
Georgia Pacific Corp  
Glaxosmithkline PLC Adr  
GoldnWst Fin CP Del  
Harley Davidson  
Heineken NV Adr  
Human Genome Sciences Inc.  
Icos Corp Del Par  
IDEC Pharmctls Corp Del  
Ingersoll Rand  
Intel Corp  
Intl Business Mach.  
Invitrogen Com  
Kao Corp Adr  
King Pharmaceuticals Inc.  
KLA Tencor Corp PV  
Kohls Corp Wise Pv1ct  
Lucent Technologies Inc.  
Lilly Eli Co.  
Marsh & McLennan Cos Inc.  
Medarex Inc.  
Medimmune Inc  
Merck & Co.  
Minnesota Mng Mtg  
Novartis Adr  
Novellus Sys Inc  
Perkinelmer Inc  
Pfizer Inc. Del  
Pharmacia Corp Com  
PPL Corporation  
Royal Carribbean Cruises

Royal Dutch Pete NLG  
Safeco Corp.  
Schering Plough Corp.  
Schlumberger Ltd.  
Siemens Ag Adr New  
Solutia Inc. Com  
St Paul Con Inc. NPV  
Textronix Inc.  
Total Fina Elf SA Spnadr  
Triquint Semiconductor  
Tyco Int'l Ltd New Com  
Untd Technologies Crp  
Vertex Pharmctls Inc.  
Vitesse Semicondctr Corp.  
Vivendi Universal Adr  
Weyerhauser Co.  
Zurich Finl Svcs Spn Adr  
Alliance Select Investor Series Biotech (mutual fund)  
J Hancock Financial Inds FD CL A (mutual fund)



***ATTACHMENT B***



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

December 21, 2001

OFFICE OF  
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Waiver Under 18 U.S.C. §208(b)(1)

FROM: Anna L. Wolgast  
Principal Deputy General Counsel  
Designated Agency Ethics Official

TO: Linda J. Fisher  
Deputy Administrator

By this memorandum, I am issuing you a waiver with respect to Pharmacia. I understand that the only interest that you retain in Pharmacia is an ongoing life, health and disability insurance program pursuant to an employment agreement entered into prior to being considered for a government position.

As you are aware, 18 U.S.C. §208(a) bars federal employees from participating "personally and substantially" in any "particular matter" which affects their financial interests. The term "particular matter" includes a lawsuit, permit, assistance agreement, contract, enforcement action, and any other matter which involves any person or entity as a specific party. The term "particular matter" also includes a rulemaking or policy matter which has a "direct and predictable effect" on your financial interests. See 5 C.F.R. §2635.402(b).

As Deputy Administrator, it is likely that you will be called upon to participate in matters which affect the financial interests of Pharmacia. Under 18 U.S.C. §208(b)(1) and 5 C.F.R. §2635.402(d), I am authorized to waive the prohibition of 18 U.S.C. §208(a) where the financial interest is "not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect." The value of your ongoing life, health and disability insurance as a result of your prior employment at Pharmacia is very small. Accordingly, your financial interest is "not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect."

A waiver under 18 U.S.C. §208(b)(1) is therefore granted, and you may participate in matters which affect Pharmacia.

Please call Kenneth J. Wernick, the Alternate Agency Ethics Official at (202) 564-1761 or me at (202) 564-8064 if you have any questions.

cc: Office of Government Ethics

***ATTACHMENT C***



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

FEB 4 2002

OFFICE OF THE  
ADMINISTRATOR

MEMORANDUM

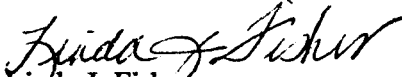
SUBJECT: Waiver Under 18 U.S.C. §208(b)(1)

TO: Anna L. Wolgast  
Principal Deputy General Counsel  
Designated Agency Ethics Official

As you will recall, on December 21, 2001, you issued me a waiver under 18 U.S.C. section 208(b)(1) with respect to Pharmacia. Specifically, your waiver allowed me to participate in any matter that affects the company.

This letter serves to inform you that I intend to make use of the waiver to participate in general policy matters that may affect Pharmacia as well as other companies in its sector. However, to avoid any appearance of conflict, I will recuse myself on a case-by-case basis from particular matters that affect Pharmacia and its subsidiary Monsanto, and Solutia, which was formerly a part of Monsanto. "Particular matters" include but are not limited to specific product-related decisions such as registrations or specific decisions regarding individual Superfund sites at which these companies are PRPs.

My Chief of Staff, Claudia McMurray, will be responsible for implementing any decisions regarding specific recusals. Please feel free to contact her or me if you have any additional questions.

  
Linda J. Fisher  
Deputy Administrator