



October 18, 2002

Betty A. Lopez
National Freedom of Information Officer
United States Environmental Protection Agency
1200 Pennsylvania Avenue NW (2822T)
Washington, DC 20460

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED) AND FACSIMILE:
(202) 566-2147

**Re: FREEDOM OF INFORMATION ACT APPEAL,
FOIA No. HQ-RIN-01332-02-A**

Dear Ms. Lopez:

This letter is a request for a response to the above-referenced Freedom of Information Act ("FOIA") appeal. By letter dated July 26, 2002, the Environmental Working Group ("EWG") appealed the constructive denial of items 1, 2, 3 and 5 of the Freedom of Information Act request filed via electronic mail on April 5, 2002. Despite expiration of the 20 working-day time period for issuance of a written determination, the EPA has failed respond to the appeal. In an effort to resolve this matter without judicial intervention, I write to demand a response to the appeal within **fourteen days** of the receipt of this letter.

The deadline for issuance of the appeal determination has long expired. EPA was required to respond to the appeal in writing by August 27, 2002. As set forth in the EPA Public Information Regulations, 40 C.F.R. Part 2.117(a) ("Section 2.117" or "the Section"):

[n]ot later than the twentieth working day after the date of receipt by the Freedom of Information officer at EPA Headquarters of an appeal from an initial denial of a request for records, the General Counsel shall issue a written determination stating which of the requested records (as to which an appeal was made) shall be disclosed and which shall not be disclosed.

As documented in the attached Certified Mail Delivery Receipt, the Freedom of Information Office at EPA Headquarters received the appeal letter on July 30, 2002. Accordingly, pursuant to Section 2.117, EWG was entitled to a written appeal

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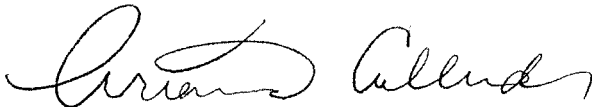
determination on the twentieth working day from this date, August 27, 2002.

Both offices responsible for addressing the appeal acknowledged receipt of the appeal yet failed to produce any substantive determination on the matter. Section 2.117 charges the EPA Freedom of Information Office and the Office of the General Counsel with the responsibility of processing FOIA appeals. The Freedom of Information Office acknowledged receipt of the appeal letter in a notice dated July 31, 2002. The Office of General Counsel acknowledged the same in a letter dated August 6, 2002. The Section provides for twenty working days from the date of receipt by the FOIA Officer for the General Counsel to produce a written appeal determination. Nonetheless, **after more than two months** since receiving the appeal letter, the EPA has failed to supply any response to the appeal.

The EPA has caused unreasonable delay with its repeated failure to respond to EWG's FOIA request. By failing to properly respond to the initial FOIA submission, the EPA constructively denied the request. Subsequently, by arbitrarily neglecting to respond to EWG's appeal of that denial, the EPA has compounded the delay and has improperly withheld public records from EWG. In the absence of a written appeal determination, EWG's only remaining recourse will be to seek judicial intervention. If a written determination in compliance with EPA Public Information Regulations is not issued to EWG within the next **fourteen days**, I will advise my client to pursue all its legal options, including filing a lawsuit against EPA for the EPA's unlawful refusal to respond to this FOIA appeal.

Enclosed, you will find a copy of the Certified Mail Receipt and a copy of the FOIA appeal letter. I do hope to resolve this matter without further delay. I can be reached at (202) 939-9156 if you would like to discuss this issue further. Thank you, in advance, for your cooperation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arianne Callender".

Arianne Callender, Attorney
Environmental Working Group

cc:

Robert E. Fabricant, EPA General Counsel (202) 564-1778

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