

From: Heather White <hwhite@ewg.org>
To: <spears.ray@epa.gov>
Cc: <fisher.linda@epa.gov>, <mcmurray.claudia@epa.gov>
Bcc: <sisterbake@aol.com>
Date: Tuesday, July 16, 2002 1:10 PM
Subject: FW: Documentation Reflecting Your Decision to Recuse Yourself from Anniston, Alabama "Partial" Consent Decree

July 16, 2002

Mr. Spears,

I sent the following email last week to Ms. Fisher's office. On Friday, July 12, I received a voicemail message from Claudia McMurray, Ms. Fisher's Chief of Staff. Ms. McMurray informed me that you would contact me to clarify whether there are indeed no records to reflect Ms. Fisher's recusal regarding the Partial Consent Decree between Monsanto and EPA concerning the Anniston, Alabama PCB site. Your Freedom of Information Act (FOIA) letter does not explicitly state, but indicates that there are no records that reflect Ms. Fisher's decision to recuse herself from considering the Anniston consent decree.

Ms. McMurray indicated that there was a general recusal regarding all matters that involve Monsanto, Solutia and Pharmacia, but not a specific one regarding the Agency's deal with Monsanto. If Ms. Fisher does indeed have a general recusal statement, why would the Office of the Administrator hide the ball by not disclosing the recusal?

I will draft an appeal of the FOIA, as Ms. McMurray has directed. However, given that it's taken three months to receive 1) a report on Anniston that was sent to Senator Shelby and is available on his website and 2) an Anniston background paper with significant redactions from your office, I am concerned about the process of setting the public record straight will be dragged out unnecessarily.

To help set the record straight, please tell us:

1. Was Ms. Fisher involved - in any way - in negotiating the deal with Monsanto regarding the company's outrageous conduct in Alabama?
2. Did Ms. Fisher recuse herself from considering or participating in the Monsanto deal negotiations (as reported in The Washington Post)?
3. What, if any, records do you have that document this recusal?

Our assumption is that someone of Ms. Fisher's upstanding reputation would have conducted herself properly by recusing herself. In all likelihood, this is just a case of misplaced paperwork. However, we need your assistance in resolving this matter quickly and without embarrassment to Ms. Fisher or others at the Agency.

Thank you for your time and consideration to this matter.

Sincerely,

Heather White

Heather White, General Counsel
Environmental Working Group

Suite 600
1718 Connecticut Ave., N.W.
Washington, D.C. 20009
Phone: (202) 667-6982
Fax: (202) 232-2592
Email: hwhite@ewg.org
Website: www.ewg.org

From: Heather White <hwhite@ewg.org>
Date: Wed, 10 Jul 2002 16:51:32 -0400
To: <fisher.linda@epa.gov>
Subject: Documentation Reflecting Your Decision to Recuse Yourself from Anniston, Alabama "Partial" Consent Decree

July 10, 2002

Re: Documentation Reflecting Your Decision to Recuse Yourself from Anniston, Alabama "Partial" Consent Decree

Ms. Fisher,

I am General Counsel to Environmental Working Group (EWG), a nonprofit environmental and public watchdog organization based here in Washington, D.C. We are investigating the EPA's decision to approve an unusual "partial" consent decree with Monsanto Company regarding a study for the clean up of the company's horrific pollution and its cover up in Anniston, Alabama.

It is my understanding that Monsanto is your former employer. On March 24, 2002, The Washington Post reported that "EPA Administrator Whitman approved the Anniston settlement, after Deputy Administrator Linda Fisher, a former Monsanto lobbyist, recused herself." See Michael Grunwald, "Proposed Settlement in PCB Case Denounced: Activists, State Officials Attack the Deal as a Last-Minute Reprieve for Corporate Polluters," The Washington Post (Mar.24, 2002).

On April 5, 2002, EWG filed a Freedom of Information Act that requested, inter alia, documentation, including "dates of meetings, agendas, lists of attendees, minutes of meetings and all correspondence, including letters, notes, e-mails, memoranda" that concerned your decision to recuse yourself from considering this Consent Decree.

On June 20, 2002, (three months later, after the Senate hearing and after comments on the Partial consent decree were due), the EPA Administrator's Deputy Chief of Staff Ray Spears answered our FOIA. Mr. Spears stated that he enclosed all records that were responsive to my FOIA request and that were not "deliberative" process.

There were no records that documented your decision to recuse yourself, as federal law requires.

Could you please verify that there are actually no records, (no letters, notes, e-mails, memoranda, dates of meetings, agendas, and no minutes of meetings), that document your decision to recuse yourself in this highly-publicized case?

Also, and most importantly, did you recuse yourself?

A copy of my FOIA is enclosed in this email. I have also attached a pdf copy of Mr. Spears' response.

Thank you for your attention to this matter.

Sincerely,
Heather White

Heather White, General Counsel
Environmental Working Group
Suite 600
1718 Connecticut Ave., N.W.
Washington, D.C. 20009
Phone: (202) 667-6982
Fax: (202) 232-2592
Email: hwhite@ewg.org
Website: www.ewg.org

From: Heather White <hwhite@ewg.org>
Date: Thu, 04 Apr 2002 11:51:30 -0400
To: <hq.foia@epa.gov>
Subject: FOIA Request: Meetings with Monsanto Officials about Anniston, AL

April 4, 2002

VIA ELECTRONIC MAIL

Agency Freedom of Information Officer
United States Environmental Protection Agency
401 M Street, SW (1105)
Washington, DC 20460

To Whom It May Concern:

Re: FOIA Request - 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, involving communications with EPA Administrator Christine Todd Whitman, Jessica Furey, and/or Eileen McGinnis and representatives or lobbyists from Monsanto, Inc., Solutia, Inc., or Pharmacia, Inc. (hereinafter collectively referred to as "Monsanto") from January 20, 2001 to the present about Anniston, Alabama.
- 2) Dates of meetings, agendas, lists of attendees, and minutes of meetings among Jessica Furey, Eileen McGinnis, and/ or any other official in the Office of the Administrator and Monsanto representatives or lobbyists from January 20, 2001 to the present about Anniston, Alabama.
- 3) Dates of meetings, agendas, lists of attendees, minutes of meetings, and all correspondence, including letters, notes, emails, 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.
- 4) All memoranda from the EPA Office of General Counsel to EPA Office of the Administrator involving meetings with Monsanto lobbyists or representatives about Anniston, Alabama from January 20, 2001 to the present.
- 5) All dates of meetings, lists of attendees, minutes of meetings, and correspondence, including letters, notes, emails, and memoranda, among EPA Administrator Christine Todd Whitman, Jessica Furey, Eileen McGinnis, and the Office of the Administrator 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 the government's implementation of its statutory mandates. EWG will use the requested documents to evaluate EPA's implementation of the Superfund Program and the overall effectiveness of the EPA. 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). 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. 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). As part of EPA's Superfund program, EPA must approve consent orders. Approval of consent decrees is an easily identifiable operation of the EPA Office of Administrator. Administrator Whitman has stated in press releases that the recent Anniston settlement "makes sure that the polluter will pay." See Elizabeth Bluemink, "Solutia signs agreement with EPA, files new petition in PCB trial," The Anniston Star (Mar. 25, 2002). Industry lobbyists routinely contact EPA about EPA's analysis and evaluation of the proposed Superfund sites. EPA's meetings with Monsanto officials and any memoranda about the Anniston site should also be easily identifiable operations of the Office of the Administrator.

Furthermore, The Washington Post reported that Deputy Administrator Linda Fisher, a former Monsanto lobbyist, recused herself when the Anniston consent decree came before the Office of the Administrator. See Grunwald, page A6. Ms. Fisher's decision to recuse herself should be documented and concern easily identifiable records in the Office of the Administrator.

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 EPA's meetings with Monsanto officials and lobbyists about Anniston, Alabama. Monsanto manufactured PCBs in Anniston from the early 1930s until the 1970s. Monsanto dumped millions of pounds of PCBs into the local waterways and landfills. Release of the correspondence, communication, and meeting notes between EPA and Monsanto representatives would allow EWG and the public to evaluate the impact of the recent Consent Decree on public health and evaluate Monsanto's influence on EPA's decision to abandon its original settlement request.

Internal memoranda, minutes of meetings, notes, and emails that involve EPA's discussions with Monsanto lobbyists will show how EPA evaluated and regulated the risks of PCBs in Anniston. Disclosure of what Monsanto communications EPA received and how EPA evaluated Monsanto's statements is meaningfully informative on how EPA's Superfund program works. This information will also help EWG evaluate EPA's implementation of CERCLA and its environmental mandates. Further, EPA's memoranda concerning this high-profile issue will bring critical insight into how EPA decided to push for a

settlement with a PRP only three weeks after a jury verdict in a state civil trial.

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. EWG plans to independently evaluate the correspondence between EPA and Monsanto representatives to determine the appropriateness of EPA's decision to approve the current Consent Decree with Monsanto. Specifically, EWG plans to evaluate EPA's implementation of Superfund, EPA's consideration of the health risks of PCBs, and EPA's overall consideration of this controversial issue and the state civil trial. EWG plans to disseminate its findings to a large range of media outlets, public citizens groups, and other activists. The public at large is very concerned about the health effects of PCBs in our air, water, soil, and our blood.

EWG is qualified to digest these communications about Monsanto's influence on EPA, 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 pesticide 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 result 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 of a settlement agreement with Monsanto and it will ensure that EPA's controversial decision to 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 EPA has implemented Superfund, how Monsanto representatives might have influenced EPA to enter into its high-profile settlement offers on the heels of the state court jury verdict, and why EPA agreed not to list the site on the Superfund National Priorities List. The correspondence will also indicate who and at what level the decision to approve the Consent Decree was made. As a government watchdog organization, EWG will use the requested information to show the public how industry pressure can influence EPA decisions at potential Superfund sites.

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 finding out how EPA came to its decision on the Anniston settlement outweighs EWG's commercial interest because 1) this issue is of critical importance to public health and safety; 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 EPA 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,

Heather Brandeis White, Esquire
General Counsel
Environmental Working Group
1718 Connecticut Ave., N.W.
Suite 600
Washington, D.C. 20009
Telephone: (202) 667-6982
Fax: (202) 232-2592
Email: hwhite@ewg.org