

2010-340

William Cody

Shushona Hyson

09/03/2010 12:58 PM

Shushona,

Here are the documents that I received and were sent to OI. OI referred this complaint to Region 9, Diane Margot.

Office of Inspector General

HOTLINE COMPLAINT FORM



Created by William Cody on 03/22/2010 at 11:05 AM

Chronological No.:	2010 340	Current Status:	<input checked="" type="checkbox"/> Closed
Date Received:	03/22/2010	Date Closed:	04/09/2010
Category of Caller:	EPA Employee	Confidentiality Requested:	Yes
Method Received:	E-mail		
Complainant type:	<input type="checkbox"/> Congressional <input type="checkbox"/> GAO referral <input type="checkbox"/> OIG Controlled Correspondence <input type="checkbox"/> None of the above		
Program Area:			
<input checked="" type="radio"/> OIG <input type="radio"/> Other EPA Program Office <input type="radio"/> State or Local Issue <input type="radio"/> External Agency or Department			
OFFICE: <input checked="" type="checkbox"/> Office of Investigations			
Referred to: <input type="checkbox"/> OI Unit <input type="checkbox"/> Resource Center			
Date Referred:	03/26/2010	Date Due:	04/09/2010

Complainant's Information

Complainant's Name:		Telephone Number(s):	
b(6), (7)(F)			
Address	City	State	Region

1200 Pennsylvania Avenue NW
Washington D.C. 20460
Office: 202-566-1257
Fax: 202-566-1610

To: Shushona Hyson/OIG/USEPA/US@EPA,

2010-340

William Cody/OIG/USEPA/US - Friday 09/03/2010 12:58 PM

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Referred to:	<input type="checkbox"/> OI Unit <input type="checkbox"/> Resource Center
Date Referred: 03/26/2010	Date Due: 04/09/2010

Complainant's Information

Complainant's Name:	Telephone Number(s):		
b(6), 7(c), 7(d)			
Address	City	State	Region

Date Acknowledgment Sent to Complainant

04/08/2010

Method of Acknowledgment

Telephone/Voice Mail

Summary of Information Provided:

03/22/2010: Submitted by William Cody - on March 22, 2010, the EPA OIG Hotline received an email from complainant who advised they had come across several questionable items discovered from within an EPA document that could possibly be considered to be Fraud, and/or Research Misconduct as defined by 42 CFR 93.103 (b).

On April 8, 2010 Deeg provided information on a County Meeting in San Benito, CA where the county, which was informed of the data we received earlier, voted to open the roads to the Superfund Site. See JPG and other pdf's on that line listed below.

Operator's Response - Action taken:

03/22/2010: Submitted by William Cody - Refer to OI.

Supporting Documentation:

- CCMA_Comment_15.pdf ✓
- perhaps zero1.pdf ✓ Ken Deeg1.doc ✓ Deeg2-2010-340.pdf ✓ Congressman Farr.doc ✓
- 140 faqs.pdf ✓ *Hotline Complaint* IMG_00023.JPG ✓ *same as the one before* 09-28-2005.JPG
- faqs 141.pdf perhaps zero.pdf sky notes.pdf rickjim discussion.pdf CCMA_Comment_15.pdf Jan to Henri, poole.pdf

The referral went to OI who sent it out to Diane Margot in Region 9.

Bill Cody
Hotline Program Manager
US EPA OIG-OCI

Hotline Program Manager
US EPA OIG-OCI
1200 Pennsylvania Avenue NW
Washington D.C. 20460
Office: 202-566-1257
Fax: 202-566-1610



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Alert

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Close

Documents

Tech/Support

Title: CLEAR CREEK MANAGEMENT AREA

Assigned Agent: VARGOT, DIANE

Number: COVP-2010-199

Status: Closed

Current Staff

Assigned	Released	Staff
05/28/2010		b(6), b(7)(C)
05/28/2010		MARGOT, DIANE

Role	Permission	Hours(Cost)	Access Granted
Special Agent in Charge	Read/Write	0 (\$0.00)	Confidential
Special Agent	Full Control	8	non-responsive Confidential

**DOCUMENT WITHHELD
IN FULL**

10 **PAGES**

b(6), b(7)(c), b(7)(d)

Rick
Cooper/CASO/CA/BLM/DOI
04/11/2008 01:42 PM

To Arnold Den/R9/USEPA/US@EPA, Jere Johnson
cc Karl Ford/NOC/BLM/DOI@BLM
bcc Janet Bedrosian/CASO/CA/BLM/DOI
Subject Uncertainty in model

Jere and Arnold,

Just reading through the executive summary. The last paragraph places some doubt as to the adequacy of the model used. The risks could be lower or 0. I am aware that EPA has been consistent in mentioning this and it was in the previous draft.

Uncertainty related to the toxicity parameters of the risk assessment includes the application of the IRIS and OEHHA asbestos toxicity models, which were developed from epidemiological studies of occupational exposures, to infrequent and episodic recreational exposures. This uncertainty could mean that the actual risks could be much lower than those estimated in the CCMA assessment and perhaps zero. Another uncertainty, adjustments for early-lifetime childhood exposures, could mean that the actual risks are higher than those estimated in the report.

I am sure BLM will be asked "why make an emergency decision on a model that may not accurately portray the risks to the public?"

The basis for the decision is the model's depiction that most of the activities exceed the acceptable risk range of 1 in 10,000.

Any thoughts on a reponse

Rick Cooper
Field Manager
Hollister Field Office
20 Hamilton Court
Hollister, CA 95023
phone: (831) 630-5010

Ken Deeg
Timekeepers MC

b(6), 7(c)

Greetings Mr Cody,

I have forwarded you one of my comments regarding the testing process the EPA used in regards to the Clear Creek Management Area Asbestos study.

Clear Creek Management Area DEIS Comments in regards to the "Realistic Testing Process" regarding ATV riding dust collection.

I have been recreating and riding motorcycles in the Clear Creek Management Area since 1968. I am a accomplished AMA-District 36 Enduro rider and hold a "B" class district card. I have been a Police Officer for the City of Santa Cruz for over 17 years. During my tenure I have been assigned to the Traffic Division completing the California Highway Patrol Motorcycle Enforcement School in Sacramento. I am a certified Bicycle instructor, certified to train Police Officers in bicycle enforcement. I am certified ATV instructor and have trained almost half of the Police officers at the Santa Cruz Police Department to safely ride an ATV.

These comments reflect the "realistic testing process" the EPA conducted in 2004 and 2005 in the Clear Creek Management Area.

The roadway is fairly narrow in the area the photo (see link below) was taken and sheltered by tall vegetation on the left side of the roadway and an embankment on the right side of the roadway. The shelter from both sides of the roadway reduces the breeze/airflow to allow the dust to hang in the air for a longer time.

Looking at the roadway you can see the tractor tracks on the left side of the photo and they appear pretty deep in the soft soil.

The roadway appears flat, smooth, unpacked or loose all the way up to the track except for what appears to be a box scraper mark at the edge of the track.

Looking at the right side of the roadway next to the far edge you can see a distinct line/color variation from what appears to be another box scraper line.

The front ATV riders front wheel is just rolling with no dust being produced. You can clearly see that the rear wheels are spinning to produce roost/more dust.

The rear ATV riders front wheels are starting to turn right and he is accelerating. The front wheels are not disturbing the ground or producing dust but, you can see the rear wheel roost and his start to slide the rear end to produce dust.

There is no dust being produced by the front wheels and the dust from the rear wheels is low to the ground but you can clearly see they are riding through a dust cloud. The photo was designed to be as realistic as possible however, I believe they are on their third or fourth pass, past the cameraman to produce enough dust to take a dusty photo.

Also the dust cloud down the road behind the ATV riders is where they were turning around. While turning they were flat playing/sliding the ATV's producing more dust, thus the test equipment is collecting more dust in unrealistic behavior in that area.

This is unrealistic behavior on the main county road through the CCMA. The roadway appears to be narrow and in an area that play/trick riding would not take place because you cannot see far enough down the road to ride safely. The ATV riders appear to be riding too close to each other to safely start their slides to produce dust. We teach our children and the public to "Tread lightly" and be responsible on county roads where other traffic such as full size motor vehicles travel and will be encountered. Also the area this photo was taken appears to be in an area that is well sheltered from the wind. The roadway in this area appears to be freshly box scraped or graded to make the roadway very loose to produce more dust than normal during the test.

The BLM denies any road maintenance during these tests but you can clearly see fresh tractor and box scraper/grader marks on the roadway.

The test riders in this test are still wearing their test equipment during the time they are flat sliding to turn around and complete more passes/producing more unrealistic dust. Their test equipment is still collecting dust/data that is not realistic and should not be used.

CEQ regulation 1501.1 reads in part "The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA."

Omitted is any information on the riders skill level and years of expertise operating these OHV's. Page B-2 of the EPA assessment reads "The trailing rider(s) remained in the dust cloud of the leading rider..." This shows a lack of expertise and knowledge of OHV riders use patterns. All experienced OHV users DO NOT ride in a cloud of dust.

This test is severely flawed and very biased based on the obvious actions shown in the photo and how the test was completed.

The way this test was completed was in error and appears to be highly biased to produce more dust than realistically or naturally possible.

Recommendation:

The test data/dust recovered during this test is flawed and should be removed from the report because it was not a realistic or natural test that would produce accurate information.

<http://www.epa.gov/region09/toxic/noa/clearcreek/images/assessment-atm-riders1.jpg>


Thank you,

Ken Deeg
Timekeepers MC

b(6), 7(c)



Timothy
Moore/CASO/CA/BLM/DOI
04/11/2008 11:05 AM

To Rick Cooper/CASO/CA/BLM/DOI@BLM
cc
bcc
Subject Re: Fw: Clear Creek Management Area Communication
Materials 

Rick -

On the FAQ's - we need to change the information packet we sell that contains the "Asbestos in the Environment at the Clear Creek Management Area" some of this information in this three page handout conflicts with the new EPA data, such as pg. 2 "low levels of asbestos are not likely to be harmful to your health".

I think BLM needs to develop it's own FAQ's for the CCMA EIS process.

Questions could be:

Why the emergency closure?

Who or what actions are exempt from the Emergency Closure?

How long will the EIS process take?

How do I provide input to the EIS?

etc.

Rick Cooper/CASO/CA/BLM/DOI

Rick
Cooper/CASO/CA/BLM/DOI
04/10/2008 03:10 PM

To Timothy Moore/CASO/CA/BLM/DOI@BLM
cc
Subject Fw: Clear Creek Management Area Communication
Materials

here are the FAQs, route any comments back to me.

Rick Cooper
Field Manager
Hollister Field Office
20 Hamilton Court
Hollister, CA 95023
phone: (831) 630-5010

— Forwarded by Rick Cooper/CASO/CA/BLM/DOI on 04/10/2008 03:09 PM —



Simms.Mary@epamail.epa.gov
ov
04/10/2008 12:17 PM

To Janet_Bedrosian@blm.gov, Rick_Cooper@ca.blm.gov
cc
Subject Fw: Clear Creek Management Area Communication

Dear Congressman Farr,

04-07-2010

I am a Police Officer with the City of Santa Cruz and have been employed there for almost 18 years. I wanted to pass on a little information I found that I hoped would garner your support to re-open the Clear Creek Management Area. I have been recreating in the Clear Creek Management Area since I was a young boy, 1968.

The Friends of Clear Creek Management Area who I am a member of requested from the BLM's Hollister field Office, information regarding Clear Creek under the Freedom of Information Act. After going through many of the reports, memos and emails I found some interesting information that you needed to be aware of.

I also requested using FOIA the photographs the EPA took during their test to record their "as close to real life" testing procedures.

On September 28, 2005 the EPA conducted their dry season dust sampling and took many photographs to document their study. The CCMA was closed to the public during the test due to the BLM enacting a dry season closure. In the photos and DEIS comment I attached you can clearly see the roadway where the ATV's and motorcycles are riding, it is very dusty. What I wanted to point out is the CCMA road has had tons of gravel placed and compacted on it over the years to keep vehicle traffic safe and to control erosion. In the photos the EPA took during their testing they photographed a portion of the roadway from Oak flat back towards the entrance. In these photos you can clearly see tractor tracks and scrape marks on the roadway, which appear to cover the fresh tire tracks. Per the BLM Hollister field Office there are no records of road maintenance during this time period and per their own policy they do not conduct road maintenance during dry the season.

The BLM purposely softened the roadway using a tractor to create dustier conditions just prior to the EPA test. This action severely undermines the public's trust in the BLM and EPA. I have attached the photographs for viewing.

On March 4, 2008 at 0831 hours, Mike Poole sent Henri Bisson an email titled: Clear Creek Asbestos Problem-Serious. The following is from the email. I attached the complete email for your viewing.

"If the EPA risk assessments hold true in their final report to be completed late April or early May, we plan to close the area off to public use. This temporary/emergency closure would encompass approximately 32,000 acres-perhaps even more to logically secure the area at key points. Subsequently, we will revise the Clear Management Plan and decide on a preferred alternative regarding future use."

"The exposure rates are much higher than expected." "Both the BLM Toxicologist Karl Ford and the Departmental industrial hygienist Tim Radtke have reviewed the draft EPA findings. At this stage, they have not disputed the risk assessment to human health. This includes the EPA protocols for sampling, analysis and modeling"

outcomes. We anticipate the closure will go into effect around May 1-concurrent with the posting of the final report by EPA."

I have the Karl Fords memo to Rick Cooper dated February 8, 2008 regarding review of "Clear Creek Management Area Asbestos Exposure and Human Health Risk Assessment," Region 9 EPA but It's in paper/memo format and I am unable to attach it at this time. I will forward it as soon as I can get it scanned into a pdf form.

The HFO BLM had been in direct contact all along with the EPA regarding their test results and knew the EPA's position regarding the risk assessment was "uncertainty or perhaps zero." The draft is not yet out yet and when they do receive it, it still states "uncertainty and perhaps zero." The EPA's report does not reflect a need to close CCMA.

On 03-07-2008 at 1:32 pm Rick Cooper sent Jim Abbott an email titled: Discussion on Clear Creek.

First bulleted paragraph: *"Making a decision the minute the final report comes out gives the appearance that BLM dis not even take time to consider the report. The intent of the RMP was to analyze land use on the project area utilizing the assessment data. It is in BLM's interest to have an open public process (even a short one) prior to making a decision for closure and may aid in our defense of any appeals."*

Second bulleted paragraph: *"BLM will need to close all county roads in CCMA to effectively close and control access to the Hazardous Asbestos Area. Not fully disclosing BLM's intent (closure) with key audiences identified in the Pre Comm. Plan and then 2 weeks later closing the CCMA could be detrimental for our long term relations ad credibility with our stakeholders."*

On 04-11-2008 at 1105 hours, After receiving the final draft EPA Executive summary report regarding the asbestos test/study of Clear Creek, Timothy Moore sent Rick Cooper an email regarding the EPA's report. Also included with the executive summary is a three-fold information sheet titled "Asbestos in the Environment at the Clear Creek Management Area."

Mr Moore writes: *Rick, On the FAQ's- we need to change the information packet we sell that contains, "Asbestos in the Environment at the Clear Creek Management Area." some of this information in this three page handout conflicts with the new EPA data, such as pg 2 "low levels of asbestos are not likely to be harmful to your health."*

"I think the BLM needs to develop its own FAQ's for the CCMA EIS process."

"Questions could be:"

"Why the emergency closure?"

I have attached Timothy Moore's original email for your viewing.

On 04-11-2008 at 0142 PM Rick Cooper sent Jere Johnson and Arnold Den of the EPA an email regarding the Executive Summary. ***Subject: uncertainty in model.***

Jere and Arnold,

Just reading through the executive summary. The last paragraph places some doubt as to the adequacy of the model used. The risk could be lower or zero. I am aware that the EPA has been consistent in mentioning this and it was in the previous draft.

I am sure the BLM will be asked "why make an emergency decision on a model that may not accurately portray the risks to the public?"

The basis for this decision is the models depiction that most of the activities exceed the acceptable risk range of 1 in 10,000.

Any thoughts on a response?

The EPA's report still reflects their position regarding the risk assessment, which was "uncertainty or perhaps zero."

The BLM and EPA are still not being very forthcoming with my FOIA requests for information regarding their communications between each other regarding the CCMA but my investigation shows the BLM severely sabotaged the EPA's dust sampling test in September of 2005. Also the BLM was in contact with the EPA throughout the study and knew the EPA's opinion regarding the risk was "uncertainty and perhaps zero" not supporting an emergency closure. After the final EPA draft was provided to the BLM, the BLM convinced the EPA to change the wording to support an emergency then permanent closure of the Clear Creek Management Area.

I also learned through reading the emails the BLM met with you and your staff prior to the closure to garner your support. I believe you as was the rest of the public were misled by the BLM.

Congressman Farr, the people need your help in this matter.

Respectfully,

Ken Deeg
Timekeepers MC
Friend of Clear Creek Management Area

b(6) 1700



Timothy
Moore/CASO/CA/BLM/DOI
04/11/2008 11:05 AM

To Rick Cooper/CASO/CA/BLM/DOI@BLM
cc
bcc
Subject Re: Fw: Clear Creek Management Area Communication
Materials

Rick -

On the FAQ's - we need to change the information packet we sell that contains the "Asbestos in the Environment at the Clear Creek Management Area" some of this information in this three page handout conflicts with the new EPA data, such as pg. 2 "low levels of asbestos are not likely to be harmful to your health".

I think BLM needs to develop it's own FAQ's for the CCMA EIS process.

Questions could be:

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How do I provide input to the EIS?

etc.

Rick Cooper/CASO/CA/BLM/DOI

Rick
Cooper/CASO/CA/BLM/DOI
04/10/2008 03:10 PM

To Timothy Moore/CASO/CA/BLM/DOI@BLM
cc
Subject Fw: Clear Creek Management Area Communication
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Hollister, CA 95023
phone: (831) 630-5010

— Forwarded by Rick Cooper/CASO/CA/BLM/DOI on 04/10/2008 03:09 PM —




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To Janet_Bedrosian@blm.gov, Rick_Cooper@ca.blm.gov
cc
Subject Fw: Clear Creek Management Area Communication





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Rick Cooper/CASO/CA/BLM/DOI

Rick
Cooper/CASO/CA/BLM/DOI
04/10/2008 03:10 PM

To Timothy Moore/CASO/CA/BLM/DOI@BLM
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Subject Fw: Clear Creek Management Area Communication
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phone: (831) 630-5010

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04/10/2008 12:17 PM

To Janet_Bedrosian@blm.gov, Rick_Cooper@ca.blm.gov
cc
Subject Fw: Clear Creek Management Area Communication



Timothy
Moore/CASO/CA/BLM/DOI
02/14/2008 01:12 PM

To Sky Murphy/CASO/CA/BLM/DOI@BLM
cc George Hill/CASO/CA/BLM/DOI@BLM, Rick
Cooper/CASO/CA/BLM/DOI@BLM
bcc
Subject Re: BRIEF FOR SD re: CCMA

Section C: Second sentence add asbestos exposure to CCMA visitors and "BLM employees".....

II Reason for timing

I am not aware of any EPA proposed legislation to ban asbestos. EPA was overturned on the ban in 1990. The State of California does have restrictions on how much and where asbestos can used .

Section D. Regulatory Framework

Need to add my comments to Rick yesterday. Asbestos in the CCMA is not simply "naturally-occurring" but has been mined, processed and roads built from this material. It is regulated by several State and Federal regulations.

Sky Murphy/CASO/CA/BLM/DOI



Sky
Murphy/CASO/CA/BLM/DOI
02/14/2008 12:44 PM

To Rick Cooper/CASO/CA/BLM/DOI@BLM, George
Hill/CASO/CA/BLM/DOI@BLM
cc Timothy Moore/CASO/CA/BLM/DOI
Subject BRIEF FOR SD re: CCMA

Gentleman,

Please review the attached briefing for the state director and provide any thoughts , comments, or questions on how to improve and/or focus the briefing on issues and decisions BLM must address in the short and long term for CCMA RMP schedule and process.

[attachment "CCMA RMP BRIEF.doc" deleted by Timothy Moore/CASO/CA/BLM/DOI]

I also figured I'd attach my notes from the meeting w/EPA.

[attachment "Meeting Notes_021208.doc" deleted by Timothy Moore/CASO/CA/BLM/DOI]

Sky Painter Murphy
BLM Hollister Field Office
20 Hamilton Court
Hollister, CA 95023
(831) 630-5039

Rick
Cooper/CASO/CA/BLM/DOI
03/07/2008 01:32 PM

To Jim Abbott/CASO/CA/BLM/DOI
cc
bcc
Subject Discussion on CCMA

Jim,

Spin off from our phone conversation. You can share with Jan and Mike, or not.

I have been brainstorming with George and others on communication and timing of communication with respect to closure.

I am covering some ground that you may not want to cover again but I wanted to make sure I got our perspective in front of you before the Tuesday meeting.

- The public meeting to explain the results of the assessment was intended to be a part of the plan process for the CCMA RMP. The release of the report and an immediate announcement of closure will reduce the effectiveness of the EPA and BLM public meeting to further explain the results and answer specific questions regarding the assessment. Focus will be on the BLM decision. There might be a planning procedural question, are we being predecisional. Making a decision for closure the minute the final report comes out gives the appearance that BLM did not even take the time to consider the report. The intent of the RMP was to analyze land use on the project area utilizing the assessment data. It is in BLM's interest to have an open public process (even a short one) prior to making a decision for closure and may aid in our defense of any appeals.
- The release of the report with a meeting scheduled no later than 2 weeks to explain the results and a BLM decision 2 weeks after the meeting would allow BLM to discuss openly and frankly with the Resource Advisory Council, OHV groups, other recreation interests, grazing lessees, mining claimants, adjacent landowners and especially the San Benito County supervisors the need for closure. Allowing the public and interested parties the opportunity (a short one) to review the Final Report will improve BLM's ability to provide a rationale for it's decision and inform these groups and will allow for an effective and supportable closure order. BLM will need to close all county roads in CCMA to effectively close and control access to the Hazardous Asbestos Area. Not fully disclosing BLM's intent (closure) with key audiences identified in the pre Comm. Plan and then 2 weeks later closing the CCMA could be detrimental for our long term relations and credibility with our stakeholders.
- It is unfortunate that we have a scheduled RAC tour in this window of time preceding the decision. I feel more than a little uncomfortable going through this tour without being able to give this group a heads up of what is about to occur. My concern is the group will be disappointed that BLM did not approach them or use them in an advisory capacity on the issue.
- The liability issue is a tough one. But it is important to note that the life time excess cancer risk models are depicting risk based on 30 years of a person conducting the activity. An additional 4 weeks (weekends) will not appreciably increase the risk to the public based on the model, and we are basing our decision on this model.

Talk to Tuesday.

Rick Cooper
Field Manager

**DOCUMENT WITHHELD
IN FULL**

10 **PAGES**

b(6), b(7)(c), b(7)(d)

Mike Pool/CASO/CA/BLM/DOI

03/04/2008 08:43 AM

To Jim Abbott/CASO/CA/BLM/DOI@BLM, Janet Bedrosian/CASO/CA/BLM/DOI@BLM, Rick Cooper/CASO/CA/BLM/DOI@BLM

cc

bcc

Subject Fw: Clear Creek Asbestos Problem - Serious

fyi. The action is now high on their radar screen back east.

----- Forwarded by Mike Pool/CASO/CA/BLM/DOI on 03/04/2008 08:41 AM -----

Henri R Bisson /WO/BLM/DOI

03/04/2008 08:38 AM

To Mike Pool/CASO/CA/BLM/DOI@BLM, "James Caswell" <James_Caswell@blm.gov>, Luke D

Johnson/WO/BLM/DOI@BLM, "Janet Lin" <JhLin@blm.gov>

cc

Subject Re: Clear Creek Asbestos Problem - Serious

Thanks, Mike! This is a case where we have to do what's right to protect the public.

Mike Pool

----- Original Message -----

From: Mike Pool

Sent: 03/04/2008 11:31 AM

To: Henri Bisson

Subject: Clear Creek Asbestos Problem - Serious

Henri, I'm sending you this again just to ensure that you have it. If the EPA risk assessments hold true in their final report to be completed late April or early May, we plan to close the area off to public use. This temporary/emergency closure would encompass approximately 31,000 acres - perhaps even more to logically secure the area at key points. Subsequently, we will revise the Clear Management Plan and decide on a preferred alternative regarding future use. This has been a long standing issue at Clear Creek for many years. Clear Creek had evolved into one of the top ten riding areas in the US and several motorcycle chapters and clubs use it annually including sponsored events. After several years of work, EPA finally concluded their sampling and modeling using the latest techniques. The exposure rates are much higher than expected. In terms of public and employee safety, we'll have no choice but to close it. This is the largest naturally occurring asbestos deposit in the US and the fibers are interspersed in the upper soil layer. Please call if any questions. I will include this issue in my briefs during my Directorate/Departmental/Congressional visits the week of April 7th. I'll keep you posted on the action steps ahead including communication plans to be jointly developed and carried out by EPA and BLM. Both the BLM toxicologist Karl Ford and the Departmental industrial hygienist Tim Radtke have reviewed the draft EPA findings. At this stage, they have not disputed the risk assessment to human health. This includes the EPA protocols for sampling, analysis and modeling outcomes. We anticipate the closure will go into effect around May 1 - concurrent with the posting of the final report by EPA. mp

[attachment "EA.CCMA_Closure.2.20.08.doc" deleted by Henri R Bisson/WO/BLM/DOI]

[attachment "2.22.08.doc" deleted by Henri R Bisson/WO/BLM/DOI]

Jan Bedrosian
Deputy State Director, External Affairs
(916) 978-4616 office



Fwd: FOIA HQ-F01-01884-10
kennydeeg
to:
FOIA OIG, FOIA HQ
03/18/2011 03:26 PM
Show Details

Hello,

This is my fourth request for this documentation. I am really disappointed nobody has even acknowledged my request.

Why is this?

Respectfully,

Ken Deeg

----- Forwarded Message -----

From: b(6), 7(c)
To: "hq foia" <hq.foia@epa.gov>
Sent: Friday, March 4, 2011 5:52:51 PM
Subject: Fwd: FOIA HQ-F01-01884-10

This is my third request regarding FOIA number HQ-F01-01884-10 regarding OIG-EPA Investigation number 2010-340 reflecting The Clear Creek Asbestos Sampling Test and report conducted by EPA Region 9. It has been over five months since my request.

I request the complete report be released to me so I may post it on the Friends of Clear Creek Management Area public website.

Thank You

Ken Deeg
Friends of Clear Creek Management Area

b(6), 7(c)

----- Forwarded Message -----

From: b(6), 7(c)
To: "hq foia" <hq.foia@epa.gov>
Sent: Thursday, February 17, 2011 1:54:33 PM
Subject: Fwd: FOIA HQ-F01-01884-10

This is my second request regarding FOIA number HQ-F01-01884-10 regarding OIG-EPA Investigation number 2010-340 reflecting The Clear Creek Asbestos Sampling Test and report

conducted by EPA Region 9.

I request this report be released to me.

Respectfully,

Ken Deeg

----- Forwarded Message -----

From: b(6), 7(c)
To: "hq foia" <hq.foia@epa.gov>
Sent: Tuesday, January 18, 2011 2:10:44 PM
Subject: FOIA HQ-F01-01884-10

Greetings Mrs Hyson,

I am inquiring about FOIA number HQ-F01-01884-10 regarding OIG-EPA Investigation number 2010-340 reflecting The Clear Creek Asbestos Sampling Test and report conducted by EPA Region 9. When I called you on 09-26-2010 you told me you were back logged and would send the documentation out when it is ready. Since it has been over three months from my request, I was hoping you were caught up and the documentation was ready to be sent to me.

Thank you,

Ken Deeg

b(6), 7(c)



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL
75 HAWTHORNE STREET, 7TH FLOOR
SAN FRANCISCO, CA 94105**

CASE #: COMP-2010-199

CROSS REFERENCE #:

TITLE: CLEAR CREEK MANAGEMENT AREA

CASE AGENT (if different from prepared by):

COMPLAINT INTIATION

Subject(s)	Location	Other Data
Unknown	Kings City, CA	

NARRATIVE: On March 22, 2010, EPA OIG Hotline 2010 – 340 was received and was subsequently provided to the Reporting Agent. Review of the documentation determined the complaint involved allegations of scientific misconduct involving the Clear Creek Management Area (CCMA) located in San Benito and Fresno counties in California. The complainant, ~~(b)(6), (7)(C), (7)(D)~~ alleges EPA did not properly conduct testing for asbestos and then altered or omitted factual statements in the final Clear Creek Management Area Asbestos Exposure and Human Health Risk Assessment report issued on May 1, 2008. Included in the complaint were comments from Ken Deeg, Santa Clara, CA, questioning the testing procedures used by EPA.

On April 8, 2010, Deeg provided additional information directly to the EPA OIG Hotline. Deeg, who is a member of an organization called “Friends of Clear Creek Management Area”, further questioned EPA’s testing methodologies and results. Deeg provided several communications between EPA and the Bureau of Land Management (BLM), the agency responsible for the management of the CCMA, which he believes demonstrates the emergency closure instituted by BLM was not supported by EPA test results.

As background, the CCMA is a 31,000 acre recreational site that contains one of the largest naturally occurring asbestos deposits in the world. Located on the CCMA is the Atlas Asbestos Mine Superfund site. In 1991, EPA signed the Record of Decision for the Atlas Mine but did not propose a cleanup action for the CCMA. Instead, EPA determined it would evaluate whether the management plans instituted by the BLM were adequate to protect public health from exposure to asbestos found in the CCMA’s soil and air. BLM designated the area as hazardous and posted asbestos warning signs.

In 2004, EPA initiated an asbestos exposure and human health risk assessment for the CCMA as part of the process of delisting the Atlas Mine site from the federal Superfund list. The purpose of the risk assessment was to update BLM’s 1992 Human Health Risk Assessment by using current asbestos sampling and analytical techniques, and to evaluate risks to children because families were frequent visitors to CCMA. The final risk assessment was issued by EPA on May 1, 2008

and concluded public use activities could expose an individual to excess lifetime cancer risks. Based on the report, BLM issued a temporary closure of CCMA in order to protect public land users from human health risks associated with exposure to airborne asbestos.

Review of the (b)(6), (b)(7)(C) complaint and supporting documentation determined the issues do not involve potential criminal violations. Rather, the issues pertain to EPA testing methodologies and edits made to the final report. Specifically (b)(6), (b)(7)(C) asserts that EPA testing methodologies negatively impacted the asbestos calculations. (b)(6) reports that on at least one occasion, EPA personnel riding on ATVs disturbed the sampling area which would have significantly increased asbestos levels. (b)(6) also states that the EPA asbestos calculations were skewed towards "dry" conditions that have the highest asbestos exposures. Finally, (b)(6), (b)(7)(C) provides several examples where edits by EPA and BLM management resulted in words or sentences being omitted from the final report and an information pamphlet.

Review of the information provided by Deeg also determined the issues do not involve specific criminal allegations. In the initial complaint documentation, Deeg provided comments questioning the "realistic testing process" used by EPA in 2004 and 2005. Deeg asserts that the ATV riders engaged in unrealistic behavior (playing / sliding/ spinning) to create more dust and that tread marks on the roadway appear to indicate BLM graded the area to make the roadway loose in order to produce more dust than normal. In the second complaint submitted directly by Deeg, he again asserts that in September 2005, EPA conducted dry season sampling in an area manipulated by BLM to create dustier conditions. Deeg also provides several communications between EPA and BLM which he believes demonstrates the emergency closure instituted by BLM was not supported by EPA test results.

Attachments

1. EPA OIG Hotline Complaint 2010 – 340, dated March 25, 2010.



C:\Documents and Settings\emargot\My

2. Complaint by Ken Deeg, dated April 8, 2010.



C:\Documents and Settings\emargot\My



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

OFFICE OF
THE INSPECTOR GENERAL

OIG HOTLINE REFERRAL

OCPM NUMBER 2010-0340

March 25, 2010

SUBJECT: OIG Hotline Complaint-Referral

FROM: SAC Douglas Zmorzenski, OIG-OI Hotline Coordinator

TO: SAC Diane Margot – Western Resource Center

In response to a USEPA-OIG Hotline Complaint forwarded to OI by the Office of Congressional, Public Affairs, and Management (OCPM), your office is provided a copy of this complaint for evaluation and appropriate action.

If you elect to take action on this matter, please notify the OIG-OI Hotline Coordinator, and indicate what type of action your office is taking.

If you have any questions regarding this referral, please contact SAC Douglas Zmorzenski, Field Support Operations, OIG-OI Hotline Coordinator at 202.566.2596.

CC: USEPA-OIG-OI Hotline Complaint File



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460
THE OFFICE OF INSPECTOR GENERAL

MEMORANDUM

SUBJECT: Office of Inspector General Hotline Complaint 2010 – 340

FROM: Stephen J. Nesbitt *Stephen J. Nesbitt*
Assistant Inspector General
Cyber Investigations and
Homeland Security

TO: Wayne McElrath
Assistant Inspector General
Office of Investigations

The enclosed Hotline Complaint 2010 – 340 is being forwarded for your information and appropriate action. On March 22, 2010 the Environmental Protection Agency (EPA) Office of Inspector General (OIG) Hotline received an email from b(6), 7(c), 7(d), who advised an EPA employee who wished to remain anonymous had provided the enclosed document which alleges violations of research misconduct as defined by 42 CFR 93.103 (b). The enclosed document essentially states that when EPA was conducting testing for asbestos at the Clear Creek Management Area they did not conduct the proper testing and then, in accordance with the Bureau of Land Management, took out factual statements.

An internet search of The Clear Creek Management Area (CCMA) disclose it is located in San Benito and Fresno Counties and is located on one of the largest naturally occurring asbestos deposits in the world. The rugged terrain overlaying this 31,000-acre serpentine deposit is a popular and challenging riding spot for off-road motorcyclists. The naturally barren slopes, bald ridges, chaparral and rare plants are also enjoyed by rock collectors, botanists, hikers, hunters and campers, including families with children. Thousands of visitors each year use hundreds of miles of criss-crossing routes, a legacy of historic mining activities in the area.

The CCMA is managed by the Department of the Interior's Bureau of Land Management (BLM). Within the boundaries of the CCMA is the Atlas Asbestos Mine

Superfund site. In 1991, EPA signed the Record of Decision (ROD) selecting the cleanup remedy for the Atlas Mine. In the ROD, EPA designated the CCMA as one of four geographic areas that comprise the site, but did not propose a cleanup action for the CCMA. Instead, EPA stated that it would evaluate whether the BLM's plans for management of CCMA were adequate to protect public health from exposure to asbestos found in the CCMA's soil and air. BLM has designated the area as hazardous, and asbestos warning signs are posted at entry points and on bulletin boards.

In 2004, as part of the evaluation of the Atlas Mine cleanup for possible delisting of the site from the federal Superfund list, EPA initiated an asbestos exposure and human health risk assessment for the CCMA. The goals of the assessment were:

- 1) To update the 1992 BLM Human Health Risk Assessment by using current asbestos sampling and analytical techniques, and
- 2) To evaluate risks to children because families are frequent visitors to CCMA.

BLM was to use the information provided in the assessment to evaluate management and use alternatives in the latest environmental impact statement for managing the CCMA. The final Clear Creek Management Area Asbestos Exposure and Human Health Risk Assessment report was released by EPA on May 1, 2008

Parts of the current draft Human Health Risk Assessment Report is attached. This is the report complainant has stated has several critical errors, omissions, and violations of 40 CFR Section 1500.

If you have any further questions please contact Bill Cody, EPA Hotline, at 202-566-1257. Please fill out the attached referral sheet and return it to us within 10 business days.

Enclosure
Cc: CCMA Complaint

Possible Fraud and/or Research Misconduct

b(6), b(7)(c), (7)(d)

to:

OIG Hotline

03/19/2010 12:37 PM

Show Details

To whom it may concern,

I wish to share with you several questionable items discovered from within a EPA document that could possibly be considered to be Fraud, and/or Research Misconduct as defined by 42 CFR 93.103 (b).

The EPA document is titled *Clear Creek Management Area Asbestos Exposure and Human Health Assessment*.

List of some of the questionable items:

1) Per a Federal Employee who at this time wishes to remain anonymous: Some or all of the Routes used by the EPA during their asbestos exposure data sampling were manipulated by a Federal Agency immediately prior to some or all of the EPA testing. (See Attachment 7(d) for full explanation)

2) In a Email message obtained via FOIA, A Bureau of Land Management Employee (field office manager) reviewed the Draft Clear Creek Asbestos Exposure and Human Health Assessment several months prior to its final release. The Field Office Manager requested that a particular phrase be removed from the document prior to it's final release. The phrase was part of a larger sentence from within the "Exposure and Risk Uncertainties" section of the EPA report.

The original sentence read: "This uncertainty could mean that the actual risk could be much lower than estimated and perhaps zero".

The Field Office Manager (who has no background in Toxicology) requested that the phrase "and perhaps zero" be removed from the Draft document prior to its final release. When the Final Document was released on 5/1/2008 the EPA had honored his request and removed the words "and perhaps zero".

3) In a interagency Email obtained via FOIA: Just prior to the 5/1/2008 release of the EPA document *Clear Creek Management Area Asbestos Exposure and Human Health Assessment* the EPA forwarded a copy of a draft three-page informational pamphlet to the Bureau of Land Management. The Pamphlet was designed to be distributed to the Public at a upcoming Public Meeting about the Health Hazards associated with asbestos in the Clear Creek Management Area.. This email documents conversations about the content of this draft three-page document, in particular the phrase "low levels of asbestos are likely to not be harmful to your health".

A EPA and Bureau of Land Management employee (who has no background in toxicology) discuss this phrase and agree that it should be rewritten. Ultimately when this Pamphlet was distributed to the public in mid-may 2008 the phrase "low levels of asbestos are likely to not be harmful to your health" was not included.

4) A constituent of mine was in the Clear Creek Management Area during one of their periods of testing (Nov 2004). He states that he witnessed the EPA riding on ATV's back and fourth several times through their own dust on a portion of road approximately 3/4 mile in length. The EPA report shows the routes taken during their testing however the witnessed activity was omitted from the report. Riding in excess of 30mph back and fourth through one's own dust for 10+ minutes while collecting asbestos exposure data is very questionable as this would almost certainty significantly increase asbestos exposures.

5) A constituent of mine was in the Clear Creek Management Area in late November and witnessed EPA

employees conducting more Asbestos Exposure Data Collection (confirmed via conversation on that day with the EPA employees). The Data collected in late November does not appear anywhere in the EPA report, it is simply missing. There had been measurable precipitation prior to this testing which typically equates to lower asbestos exposures, for a unknown reason this data was not released to the public.

6) The EPA document designated the November 2004 testing session occurred under "moist" conditions, the document also denotes the criteria used to determine soil conditions. 0% of the November 2004 samples met "moist" criteria, instead they all meet "dry" criteria. This is significant because per the EPA document dry soil conditions create the most dust and subsequent asbestos exposures. (I have assembled a 20+ page report on this finding)

7) The Asbestos Exposure calculations are heavily skewed towards "dry" conditions (again dry conditions have the highest asbestos exposures). For a unknown reason the EPA in some cases used 10 times more "dry" samples when conducting their risk calculations then "moist/wet" samples. This is significant because the EPA document states several times that visitor use to the Clear Creek Area is lowest during the "dry" season and the goal of the entire study was to duplicate "typical exposures". For a unknown reason the EPA chose to use a inordinate amount of "dry" samples despite known visitor use being at its lowest during the "dry" season (80% of total visitor use occurs during the moist/wet season). (I have assembled a 20 + page report on this finding).

I am able to provide documentation of all referenced items.

Respectfully,

b(6), b(7)(c), (7)(d)

Re: Clear Creek Management Area
Wade Najjum to: Diane Margot

06/09/2010 05:22 AM

History: This message has been replied to.

Diane,

Thanks for sending the background. I reviewed the information. OPE would not open a project based on the information provided. In my opinion, the generalized allegation of research misconduct by EPA in the is not supported / corroborated by the information provided by the complainant.

VR

Wade

Diane Margot

Wade, As discussed, here are the two Hotline c...

06/08/2010 04:30:48 PM

From: Diane Margot/OIG/USEPA/US
To: Wade Najjum/OIG/USEPA/US@EPA
Date: 06/08/2010 04:30 PM
Subject: Clear Creek Management Area

Wade,

As discussed, here are the two Hotline complaints received on the Clear Creek Management Area. After reviewing, let me know whether your office is interested in having the matter referred for possible review / action.

Thanks.

[attachment "CCMA Hotline Complaint.pdf" deleted by Wade Najjum/OIG/USEPA/US] [attachment "Deeg.pdf" deleted by Wade Najjum/OIG/USEPA/US]

E. Diane Margot
Special Agent in Charge
Office of Investigations - Western Division
San Francisco, CA
Phone: 415.947.4507
Fax: 415.947.4511



Re: Fw: Clear Creek management Area
Diane Margot to: Wayne McElrath
Cc: Michael Daggett

04/08/2010 02:07 PM

Wayne,

I disagree and see nothing in the information that indicates potential criminal activity. The complainant is unhappy with a decision to restrict access to a popular off road biking area because of asbestos contamination. He implies EPA and BLM may have doctored some results but doesn't provide anything to support this. If this is what you think needs to be investigated it would be Hoffman's unit.

I respectfully ask what experience or knowledge is Bill Cody basing his comment that "EPA is going to get run over" on?

Diane

E. Diane Margot
Special Agent in Charge
Office of Investigations - Western Division
San Francisco, CA
Phone: 415.947.4507
Fax: 415.947.4511

-----Wayne McElrath/OIG/USEPA/US wrote: -----

To: Diane Margot/OIG/USEPA/US@EPA
From: Wayne McElrath/OIG/USEPA/US
Date: 04/08/2010 01:37PM
cc: Michael Daggett/R8/USEPA/US@EPA
Subject: Fw: The Clear Creek management Area

Hi Diane,

This appears to be a viable hotline referral. Input immediately.

Wayne A. McElrath
Acting Assistant Inspector General for Investigations
U.S. Environmental Protection Agency
Office of Inspector General
Office of Investigations - Headquarters
1200 Pennsylvania Ave, NW (MC 2431T)
Washington, DC 20460
Work: 202-566-0875
Fax: 202-566-0814

----- Forwarded by Wayne McElrath/OIG/USEPA/US on 04/08/2010 03:33 PM -----

**William
Cody/OIG/USEPA/US**

To
Wayne McElrath/OIG/USEPA/US

cc
Douglas Zmorzenski/OIG/USEPA/US@EPA

04/08/2010 04:29 PM

Subject
Fw: The Clear Creek management Area

This is further information I received a few minutes ago from Ken Deeg in California. Ken is Police Officer and is gathering some steam out there on this issue. If we don't get moving EPA is going to get run over.

Just FYI.

Bill

From: b(6), 7(c)
To: William Cody/OIG/USEPA/US@EPA
Date: 04/08/2010 03:49 PM
Subject: The Clear Creek management Area

Hi Bill,

This is a rendition of the letter and information I provided to the San Benito County Board of Supervisors and their County Counsel.

This letter is to local area Congressmen Sam Farr.

Thanks,

Ken Deeg

b(6), 7(c) (See attached file: 09-28-2005.JPG) (See attached file: Congressman Farr.doc) (See attached file: faqs 141.pdf) (See attached file: perhaps zero.pdf) (See attached file: sky notes.pdf) (See attached file: rickjim discussion.pdf) (See attached file: CCMA_Comment_15.pdf) (See attached file: Jan to Henri, poole.pdf)

[attachment "09-28-2005.JPG" removed by Diane Margot/OIG/USEPA/US]
[attachment "Congressman Farr.doc" removed by Diane Margot/OIG/USEPA/US]
[attachment "faqs 141.pdf" removed by Diane Margot/OIG/USEPA/US]
[attachment "perhaps zero.pdf" removed by Diane Margot/OIG/USEPA/US]
[attachment "sky notes.pdf" removed by Diane Margot/OIG/USEPA/US]
[attachment "rickjim discussion.pdf" removed by Diane Margot/OIG/USEPA/US]
[attachment "CCMA_Comment_15.pdf" removed by Diane Margot/OIG/USEPA/US]
[attachment "Jan to Henri, poole.pdf" removed by Diane Margot/OIG/USEPA/US]

Heads Up - [redacted] Stav Betancourt DOI OIG

to: Diane Margot

05/06/2010 11:02 AM

b(6), 7(c)
Diane,

Just a heads up, I received a call from [redacted] Dept of Interior OIG this afternoon. He was following up on whether I received the material he sent me and if I was comfortable talking about things. I told him I had talked to you and you told me that you had also received a complaint regarding the Clear Creek Management Area. I told him in general that I had looked over his summary of document changes and really did not have any concerns about the changes that have been made.

I told him that I planned on touching bases with you next week when I am back in the office to see how or what we might want to do with this complaint, and suggested that it might be worthwhile for all of us to talk to see if this was something that might have joint interests or not. [redacted] said he might call you and I told him that was fine with me.

I told [redacted] that if he had specific concerns with the risk assessment findings that I would probably pass him along to someone else, but if he wanted to discuss the report in general terms and some of the changes to the report we could probably do that, so that he gains a better understanding of the issues.

Initially he wanted to meet late next week, May 13 or 14, but I told him I had to come back to NJ next week and then I was in North Carolina the following week. If you still plan on having OIG training in San Francisco in late May, I suggested that might be a possible time to sit down when both of us were there.

b(6), 7(c)

Referred to
Interior - OIG

5 pgs