



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Special Report

Public Release of "Rumple Report" on Preliminary Investigation of EPA Cleanup of Amphibole Asbestos in Libby, Montana

Report No. 09-N-0146

April 28, 2009



At a Glance

Catalyst for Improving the Environment

Background

In March 2006, the Office of Inspector General (OIG) opened a preliminary investigation of U.S. Environmental Protection Agency (EPA) asbestos cleanup efforts in Libby, Montana, based on allegations that EPA failed to fully address scientific standards for cleanup and of possible contractor misconduct. The Special Agent conducting the investigation determined that, in his judgment, no criminal activity occurred. The Special Agent submitted an investigation summary to his superior on April 27, 2006, detailing the findings of his investigation and recommended that another component of the OIG evaluate EPA cleanup actions in Libby. This memorandum came to be known as the "Rumple Report."

For further information, contact our Office of Congressional, Public Affairs, and Management at (202) 566-2391.

To view the full report, click on the following link:
www.epa.gov/oig/reports/2009/20090428-09-N-0146.pdf

Public Release of "Rumple Report" on Preliminary Investigation of EPA Cleanup of Amphibole Asbestos in Libby, Montana

On April 21, 2009, Public Employees for Environmental Responsibility (PEER) filed a lawsuit against the Office of Inspector General (OIG) seeking the release of the "Rumple Report." The OIG has the authority to process Freedom of Information Act (FOIA) requests for OIG information and make its own determinations on what information should be withheld, independent of EPA's FOIA Office.

The OIG has decided to release this memorandum in view of the new FOIA guidelines issued by the President and the Attorney General. Given the wider interest in this memorandum, the Acting Inspector General determined that it should also be released to the public, along with a recent internal memorandum that clarifies the circumstances surrounding the "Rumple Report."



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

OFFICE OF
INSPECTOR GENERAL

April 28, 2009

MEMORANDUM

SUBJECT: OIG Clarification of the Circumstances of the "Rumple Report" on the
Asbestos Contamination in Libby, Montana

A handwritten signature in black ink, appearing to be "Cory Rumple", written over a light blue circular stamp.

FROM: Cory Rumple
Special Agent
Office of Investigations

TO: Bill A. Roderick
Acting Inspector General

During the last few years, there has been a continuing interest from Congressional officials and the media about a memo I wrote summarizing the results of a preliminary criminal investigation I conducted of the situation in 2006 in Libby, Montana. I want to clarify the circumstances of the memo in order to put any lingering questions to rest.

I. Origins of the "Rumple Report"

The memo I drafted was internal to the Office of Inspector General (OIG) and was intended to provide the impetus for a possible OIG evaluation of EPA's conduct of a "clean up" of amphibole asbestos in Libby, Montana. Some people from Libby were aware of this memo and early on began referring to it as a "report" or the "Rumple Report." Subsequently, the media began referring to my memo as the "Rumple Report." However, my memo was never a report in the sense of a normal OIG report that was planned for issuance. After preparing the memo in 2006, I left the EPA OIG for other employment but returned in 2007. In August 2006, the OIG Office of Congressional and Public Liaison reviewed my memo and began an audit effort that ultimately verified the information I provided and issued a quick reaction report: "EPA Needs to Plan and Complete a Toxicity Assessment for the Libby Asbestos Cleanup," Report No. 2007-P-00002, December 5, 2006. Also, OIG Office of Investigations reviewed my report and in October 2006 began a 21-month-long criminal investigation of the situation at Libby. This investigation concluded with a declination of the criminal case by the Public Integrity Section, Criminal Division, U.S. Department of Justice, responsible for prosecuting public corruption. The

investigation also resulted in OIG testimony to the Senate Environment and Public Works Committee on September 25, 2008, by the Assistant Inspector General for Investigations.

Below is a more detailed account of the circumstances surrounding my investigation into the EPA cleanup of Libby and my subsequent memo. The original memo is included as an attachment.

II. Detailed Account of Libby Investigation

I opened the investigation based upon the allegation of EPA contractors improperly cleaning residential homes in Libby by means of using an encapsulate liquid or water on carpets in order to deem a home “clean” of Libby-amphibole asbestos. Individuals had claimed that the encapsulate, which was acceptable to use inside of walls and attic spaces, was being used improperly on carpets, and when asbestos fibers were monitored at the conclusion of a cleaning, safe levels of asbestos would be detected. This in turn would allow the contractors to move on to the next house, and allow them to be paid for a house deemed “clean” of asbestos fibers. However, the people who had made the allegations stated that when encapsulate or water dried, or someone caused friction to the liquids, such as walking or crawling on the carpet, the fibers that were originally suppressed could become airborne and dangerous.

When I went to Libby, MT, to speak with individuals about this situation, they wanted to talk about the documents that EPA had disseminated during the cleanup and the lack of a risk assessment associated with the cleanup. I researched the history of the mine and the information surrounding the toxicity of asbestos, along with EPA’s history of involvement after the problem was detected. The use of the encapsulate liquid appeared to be a very isolated situation, and included confusion on the part of the residents who had their homes cleaned. But the information surrounding the lack of a risk assessment seemed to be more urgent and warranting investigation. Witnesses who were familiar with the science, or lack thereof, surrounding Libby-amphibole asbestos were telling me that EPA was trying to rush through a Record of Decision without conducting the proper scientific studies needed to justify that decision. People pointed to the language in materials given to them by EPA, which caused confusion about the safety surrounding exposure to the asbestos. The two main documents cited included the “Living with Vermiculite” document and the “comfort letters,” which were given to residents after their homes were cleaned of asbestos. Both of those documents appeared to contain language that, according to Mr. Gerry Henningsen and Dr. Brad Black, could not be supported by science. It appeared EPA was using scientific standards associated with a “removal” process to justify a “remedial” phase of cleanup, which violated EPA’s own rules on such cleanups. So I took those materials and put them in front of the scientists and other Remedial Project Managers to get their thoughts on the cleanup process. All of the EPA employees I spoke to, excluding those from the Syracuse Resource Corporation, said the language was incorrect, could not be supported by science and were potentially dangerous. There was a real disconnect between the scientists and the Agency.

I interviewed as many people as I could before I concluded there was nothing criminal in nature. I also felt that the citizens of Libby needed an advocate or voice because they were very frustrated with EPA and what they considered a lack of cooperation for the cleanup.

III. Conclusion

Instead of simply closing the case, I wrote a memo to memorialize what I had learned. The purpose in writing it was so that another OIG authority, which I thought would be the Office of Program Evaluation, could pick up where I left off and possibly report the situation to the Agency quickly. I believed time was of the essence, as the Agency appeared to be heading down the same road it did with the 9/11 fallout. I felt the memo would start a non-criminal review which might slow down what I perceived to be a rush to a Record of Decision and possible future illnesses and deaths in Libby. I wanted to make sure the information I gathered would not simply languish and EPA's cleanup would not contribute to possible future problems. In short order, the OIG did launch both a special review and a criminal investigation, as noted above.

Attachment

cc: Mark Bialek, Associate Deputy Inspector General and Counsel
Stephen Nesbitt, Assistant Inspector General for Investigations
Eileen McMahon, Assistant Inspector General for Congressional, Public Affairs and Management



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Memorandum

Subject: Criminal Investigation of Libby, MT asbestos cleanup.

To: Diane Margot, Special Agent in Charge

From: Cory Rumble, Special Agent

On March 9, 2006, the Environmental Protection Agency, Office of the Inspector General, Office of Investigations, opened an investigation of the EPA's asbestos cleanup in Libby, MT based on allegations the EPA failed to fully address scientific standards for cleanup and possible contractor misconduct. The purpose of this memo is to apprise you on the findings of that investigation and to recommend additional analysis be conducted by the OIG-Office of Program Evaluation.

The residential cleanup of Libby, MT began after the EPA's Emergency Response Team arrived in late 1999. Under the Sampling and Quality Assurance Project Plan (SQAPP), dated January 4, 2000, the EPA attempted to identify a sampling methodology to investigate levels of possible asbestos within Libby, MT. On March 31, 2001, the EPA's Office of Inspector General completed a review of EPA's past involvement with Libby, MT in the early 1980's and the complications surrounding the EPA's past response to its findings of asbestos contamination. In 2002, the EPA began a "systemic investigation and emergency response cleanup" of residential properties in Libby, MT. In order to determine the amount of cleanup needed for individual properties, the EPA created the Contaminant Screening Study (CSS), which established a criteria for properties to clean. On December 15, 2003, the EPA, along with the Syracuse Research Corporation (SRC), generated the Action Level and Clearance Criteria Technical Memorandum, which set forth the EPA's standards for amphibole asbestos contamination for the "protectiveness of human health." That memorandum is the benchmark utilized today for the determination of safe and acceptable levels of asbestos contamination within residential properties. The EPA is currently attempting to transition from a removal phase into a remedial phase, which includes the formation of a Record of Decision (ROD) and final determination of safe and acceptable levels of exposure and contamination.

On March 1, 2006, Gerry Henningsen, former Senior Toxicologist for the EPA and current Technical Advisor to the Technical Advisory Group (TAG) for Libby, MT, provided information regarding shortcomings surrounding the asbestos cleanup in Libby, MT. Henningsen, who is apparently well respected by former colleagues within the EPA, indicated the

Remedial Project Managers (RPM) from the EPA overseeing the cleanup were ignoring scientific protocols for such a cleanup and implementing cleanup standards without the support of scientific data. Henningsen alleged that the risks associated with Libby-amphibole asbestos are being established by an "engineering" means, which jeopardizes the health and safety of future Libby, MT citizens. Henningsen also spoke of cleanup practices which compromised health and safety, including the manipulation of air sampling within the interiors of homes. Henningsen explained that interior carpets were sprayed with water or an encapsulant liquid by cleanup contractors in order to suppress asbestos fibers during a cleanup, which in turn would produce an air sample that met the clearance criteria for safe levels of contamination.

Subsequent interviews with Libby, MT citizens revealed both first and second hand accounts of contractors using the practice of wetting down carpets in order to obtain clearance samples. Those interviews also produced information concerning problems with exterior residential cleanups. Citizens and former contractor employees were concerned about visible, shiny vermiculite that is left behind by contractors after a residential yard has been excavated and cleaned of vermiculite. The reasons given as to why those areas were not cleaned included soil samples that registered safe levels of asbestos or "non-detect", along with those areas being determined as "low-use" areas. Others voiced concerns that interior walls were being encapsulated instead of cleaned and cleanup crews were not following proper safety measures when contacting materials containing asbestos.

Members of the TAG, including Dr. Brad Black of the Center for Asbestos Related Disease (CARD), expressed concern over a lack of communication between the TAG and the EPA regarding the scientific research and data utilized by the EPA for the cleanup. In a recent letter to Montana Senator Max Baucus, Dr. Black wrote, "I have yet to see adequate understanding of the relative hazard of the Libby amphibole." Dr. Black went on to state, "I believe that it is important for you to be aware of the lack of communication in this regard and the potentially undesirable outcomes that could result from not working closely together." Dr. Black also expressed consternation with the lack of a Risk Assessment document from the EPA, which would incorporate scientific information to reduce the variables surrounding asbestos exposure pathways and help eliminate the uncertainty of the current cleanup standards.

During the removal phase of cleanup, the EPA has distributed documents to the public which explain the agency's current stance on levels of exposure and contamination. One such document, titled "Living with Vermiculite", dated October of 2003, states the following:

"Although all asbestos is hazardous, it is important to keep potential exposures in perspective. Even though contacting or working near vermiculite or other asbestos-containing materials can release asbestos fibers into the air, if such exposures are infrequent or for short durations, they will not likely significantly increase your risk of health effects, especially if common-sense precautions are taken."

Another document, which many citizens of Libby, MT describe as a "comfort letter", was distributed by the EPA to individuals who received property cleanup. In a letter to Libby, MT resident Eva Thomson, dated March 29, 2006, EPA's Jim Christiansen writes the following:

"Analysis of samples from this property showed that Libby amphibole asbestos was not detected, or was detected at levels below EPA's current level of concern. The property meets the EPA's current standards for protectiveness of human health for Libby amphibole asbestos contamination set forth in EPA's Action Level and Clearance Criteria Technical Memorandum (December 15, 2003) for the Libby Asbestos Site.

Very low, often immeasurable, levels of Libby asbestos may remain in soil, indoor dust, fabrics, upholstery, and carpets. Current EPA risk assessments suggest that these circumstances do not pose a significant health risk."

Christiansen then goes on to write:

"At this time, EPA considers cleanup of this property complete and does not anticipate that additional cleanup measures will be required. However, EPA and others continue to investigate the health effects of Libby asbestos. Cleanup levels and approaches may be adjusted in the future as new information and data becomes available. EPA has not yet set final cleanup levels for the Libby Asbestos Site. This will occur when EPA publishes a final Record of Decision. If this results in a need for additional sampling or cleanup at this property, the property owner will be contacted. Again, the likelihood of this occurring is low."

Current scientists and members of the EPA's Technical Assistance Unit (TAU) involved in drafting the Risk Assessment for the Libby Asbestos Site found the language in the aforementioned documents to be misleading. A chemist from the TAU called Christiansen's letter to Thomson "exceptionally deceiving", adding that she had encountered frustration with the RPM's to incorporate additional scientific studies during the cleanup process in order to draft an accurate Risk Assessment. Chris Weis, Senior Toxicologist for the EPA's National Enforcement Investigations Center (NEIC) in Denver, Colorado stated the "Living with Vermiculite" language contained untruths, specifically the conclusion surrounding short-term exposures. Weis stated the language within that document contained "double speak", adding in his opinion it was "unconscionable" to write a document with such language. Another EPA Toxicologist and current member of the TAU, who described the RPM's as "marginalizing" the risks associated with the Libby, MT asbestos, stated the language in Christiansen's letter to Thomson was "premature" and lacked scientific support for such conclusions. This same EPA Toxicologist described the "Living with Vermiculite" document as a misrepresentation of the current scientific knowledge surrounding the Libby-amphibole asbestos. Scientists associated with the Libby project feel such conclusions can not be made prior to having a Risk Assessment. Dr. Aubrey Miller for the TAU called Christiansen's letter "totally disingenuous", adding the standards referenced in the letter as those of human health "protectiveness" are standards used for a "removal action" and not standards for a "remedial action." According to Dr. Miller, the fact that the TAU was not even consulted before dissemination of the letter illustrates the disconnect between the RPM's and the TAU. Dr. Miller and other members of the TAU are also concerned that because additional pathway sampling has not been done since the removal action began, the samples the EPA currently possesses from the removal action may be insufficient to support an accurate Risk Assessment. The TAU, along with members of the TAG, believe additional sampling at Libby, MT should have been conducted after the initiation of the removal phase so a remedial action would have adequate, scientific data to work with.

TAU concerns regarding recent conclusions made by the RPM's surrounding risks associated with the Libby-amphibole asbestos expose the possibility of individual liability for such assertions. On February 2, 2006, the Southern District of New York ruled that former EPA Administrator Christine Todd Whitman could be sued individually for making statements on behalf of the EPA about the health risks of asbestos following the destruction of the World Trade Centers in New York City after 9/11. The Court, which actually cited Libby, MT, found that Whitman's conclusions, such as *"Short-term, low-level exposure of the type that might have been produced by the collapse of the World Trade Center buildings is unlikely to cause significant health effects"* and *"The good news continues to be that air samples we have taken have all been at levels that cause us no concern"*, were made without sufficient scientific support and caused individuals to be potentially exposed to harmful asbestos. The Court stated, *"Although tests revealed high levels of asbestos, on September 17, 2001, Federal and New York City officials allowed thousands of people to return to their homes and workplaces in Lower Manhattan and Brooklyn, without any proper cleanup of those areas. The EPA and Whitman issued a number of press releases which falsely represented that the air in and around lower Manhattan was safe to breathe, and that there were no significant health risks, although at the time they issued these statements, the EPA and Whitman did not have sufficient data and analyses to substantiate these statements."*

Henningsen indicates that he is attempting to work with the EPA, specifically the RPM's and the TAU, through the TAG to ensure that the rules that regulate hazardous material cleanups are followed. Henningsen believes the current approach being taken by the EPA could violate its own rules. But he also believes the agency has an opportunity to remedy the situation, through obtaining Libby-site specific data on cumulative exposure pathways, toxicity potency data in animal models, bio-monitoring data of Libby residents and workers, and ecological screenings. According to Henningsen and other members of the TAG, if the EPA attempts to write a Risk Assessment and a Record of Decision based on the sampling data from the removal action only, the protectiveness of the cleanup will be compromised and the health and safety of current and future Libby, MT citizens could be jeopardized.

Max Dodson, Assistant Regional Administrator for EPA Region 8, and Peggy Churchill, EPA Region 8 RPM for the Libby Site, have expressed frustration with the amount of understanding and cooperation given to them from EPA Headquarters. With a limited budget for cleanup and scientific investigation, along with ambitious deadlines for a Risk Assessment and a Record of Decision, their jobs as Risk Managers to coordinate such a cleanup have been difficult. Over \$100 million has already been spent towards the Libby Site and both Dodson and Churchill have been tasked with coordinating both the scientific and fiscal responsibilities associated with this cleanup. They also indicated the involvement of the TAU was hindered for an extended period due to a toxicological expertise void that they have attempted to fill. From their standpoint, Risk Management techniques involving the uncertainties surrounding Libby-amphibole asbestos have reduced the possibilities of exposure to currently known scientific degrees. They also believe the technical input from current EPA scientists involved with the cleanup has been lacking, and has contributed to the disconnect between the RPM's and

the TAU. Dodson and Churchill spoke of the difficulties surrounding the amount of variables associated with pathway sampling and that trying to satisfy an undeterminable amount of acceptable samples for the remediation process may be an impossibility. Because of the uniqueness of Libby-amphibole asbestos and ongoing studies of its toxicity within specific pathways, the RPM's have attempted to clean residential properties by incorporating what they do know about the contaminant. In regards to the language within correspondence with Libby, MT homeowners, both agreed that the letters should be reevaluated.

However, Bonita Lavelle, an EPA RPM for approximately 16 years, says the Libby Site Project Team is not functioning properly and is ignoring the scientific data associated with the site. The relationship between the RPM's and the TAU has dissolved to the point of personal attacks being made against members of the TAU. Lavelle was assigned to manage the asbestos mine outside of Libby, MT once the residential properties had been cleaned. When she came on in the Fall of 2005, she immediately found conflicts in information between the RPM's and the TAU. Lavelle was concerned that the RPM's appeared to disregard suggestions or questions from others, including herself, to the point of asserting that the RPM's simply used a contractor, the Syracuse Resource Corporation, to assist in determining risks associated with the Libby Site. She also felt that the order of Project Team structure, which is typically two separate bodies ultimately reporting to Max Dodson had broken down. Instead of two independent bodies giving input, it appears only one body is being heard; the RPM's. Lavelle added that the current process involved with the Libby, MT cleanup is "completely different" from EPA's common practice of hazardous materials cleanups and she recently abandoned the project because of her mounting frustration.

Jim Christiansen, EPA RPM for the Libby Site, recently left the EPA and moved back to Florida. He explained that there was a division between the RPM's and the TAU, and that the members of the TAU did not understand the aspect of decision making. Christiansen had to make decisions and the TAU, by arguing about risk to the "99th degree", stalled the process of trying to clean the town. Christiansen stated before he became the RPM for the Libby Site, unreasonable expectations were made by the removal team in regards to how much the agency would clean and to what degree. Christiansen also indicated that Dr. Aubrey Miller, the EPA's current Senior Medical Officer on the Libby Site, is not a toxicologist and was not qualified enough to offer solid recommendations for the cleanup. He added that the new toxicologist assigned to the Libby Site is also new to evaluating asbestos and for approximately two or three months, the TAU has controlled the cleanup evaluation and stalled progress.

The deadlines placed upon the EPA to complete a Risk Assessment and a Record of Decision regarding the cleanup of Libby, MT appear to be tremendous. Based on interviews of individuals who have studied asbestos or of those currently working on the EPA's Risk Assessment for Libby, MT, the uncertainty that surrounds Libby-amphibole asbestos and its harmful potential appears to require additional scientific research. The issues of communication gaps and procedural ideology differences among members of the EPA's Libby, MT project team, along with the scientific data used for a Risk Assessment and subsequent Record of Decision, do not appear to contain criminal activity. Therefore, additional criminal investigation is unwarranted. However, it appears additional review of those issues surrounding the Libby, MT cleanup could be appropriately assessed by the Office of Program Evaluation.

Distribution

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