



**OFFICE OF INSPECTOR GENERAL
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Investigative Activity Report**

Case Name:

AGENCY HANDLING OF COAL ASH (2009-CS-0129)

Conducted by:

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Conducted on:

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Conducted at:

USEPA, Potomac Yards-
North, Arlington, VA 20460

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090809, WITNESS INTERVIEW OF: CUTHBERTSON, BECKY

On September 8, 2009, Becky CUTHBERTSON, Environmental Engineer for the U.S. Environmental Protection Agency (EPA), Office of Solid Waste and Emergency Response (OSWER), was interviewed by Special Agent (SA) Edward MCCUSKER and SA Jennifer PALLOTTA of the EPA, Office of Inspector General, Office of Investigations. The purpose of the interview was to obtain information pertaining to the EPAs handling of Coal Ash. After the Agents properly identified themselves, CUTHBERTSON provided the following information, in substance:

CUTHBERTSON's social security number is _____ and her date of birth is _____

Ex 6

She's been employed as an Environmental Engineer with the EPA OSWER, Office of Solid Waste (OSW) since October 1988. She recently worked on a six month temporary detail with the Office of Research and Development (ORD) that concluded in the fall of 2008. Prior to the detail, she worked in OSW's Economics, Methods and Risk Analysis Division (EMRAD).

Soon after CUTHBERTSON returned to the OSW from her ORD detail, she was assigned to a work group focusing on the disposal of Coal Ash. Although CUTHBERTSON was assigned to the workgroup, she was not involved with the 2007 Coal Ash Disposal Report. Mike CLIPPER of EMRAD knew more about the report because he worked on Coal Ash for over four years.

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CUTHBERTSON's supervisors at EMRAD were as follows:

- " Barnes JOHNSON- Left EPA in the summer of 2003
- " Gary BALLARD- (Acting)- Ballard was acting supervisor for about 3 years and retired in 2005
- " Jan YOUNG (Acting)- Young was acting supervisor for about 1 year
- " Peter GRAVATT- He was her supervisor from October 2006 until September 2008. He then left the unit for another position within EPA.
- " Jan YOUNG (Acting) - She was again the acting supervisor but only for a few weeks.
- " Lee HOFFMAN- She took over for YOUNG and is CUTHBERTSON's current supervisor.

During JOHNSON's tenure, CUTHBERTSON and her EMRAD colleagues had strong objections to what was written in an EPA publication that was commonly referred to as the Green Book. The Green Book dealt with the beneficial use of Coal Ash in Highways. CUTHBERTSON was concerned that the book was not peer reviewed and there weren't sufficient studies done to support the claims of the beneficial uses listed in the publication. JOHNSON supported CUTHBERTSON and forwarded these concerns to Richard KINCH, Branch Chief, Municipal and Industrial Solid Waste Division (MISWD). She couldn't recall KINCH's supervisor but it may have been Bob DELLINGER. Other EPA employees that supported KINCH were Andy WITTNER and Elizabeth A. COTSWORTH. Although EMRAD objected to some of the language in the Green Book, KINCH and others did address some of EMRAD's concerns but not to their total satisfaction. CUTHBERTSON felt that EMRAD's concerns were essentially ignored and "steamrolled."

CUTHBERTSON and others at EMRAD also had strong concerns about a document that the EPA wanted to publish on the beneficial uses of Flue Gas Desulfurization (FGD) in agricultural materials. Again the FGD agricultural beneficial uses were never peer reviewed and the document was published over EMRAD staff objections.

After the 1999 Report to Congress on Wastes from the Combustion of Fossil Fuels and the May 2000 EPA Regulatory Determination on Wastes from the Combustion of Fossil Fuels, questions arose regarding the possible risks of using Coal Combustion Wastes (CCW) in agricultural products. A peer review on a companion project related to agricultural uses indicated that there were some risks that could also be associated with using CCW in agricultural materials. CUTHBERTSON advised JOHNSON of these possible risks. JOHNSON then raised these possible risks with KINCH, which were again "steamrolled" because the 2000 EPA Regulation Determination said that beneficial uses of CCW, which would include agricultural uses, posed no significant risks.

CUTHBERTSON's supervisors generally supported her risk concerns associated with the Green Book and the Agricultural Use of CCW; however, one supervisor named Peter GRAVATT didn't support her concerns related to the beneficial use of FGD. After informing GRAVATT of her

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FGD concerns, he no longer asked CUTHBERTSON for her opinion on the safety risks pertaining to CCW beneficial uses when it was clear she disagreed with him on the matter.

Although CUTHBERTSON did not work on the aforementioned 2000 EPA Regulatory Determination, she recalled some of the information in it was really controversial. For example, the 2000 EPA Regulatory Determination said that beneficial uses, which would include Cement Kiln Dust (CKD) in agricultural uses, posed no significant risk. However, during the peer review response period of CUTHBERTSON's work on a CKD rule determination, the responses did not support CKD agricultural uses. She shared this information with JOHNSON who in turn shared it with KINCH. Again her concerns were not addressed.

Sometime in 2006, EPA wanted to publish a document on the benefits of using FGD in soil. The individuals that wanted it published included John SAGER, Paul CASSIDY, Lillian BAGUS and some individuals in ORCR. CUTHBERTSON and her EMRAD colleague Tim TAYLOR worked on this publication and had many questions. One of the questions they asked was, "What is in this stuff?" Scientists in the mid-west were saying not to put FGD in the soil. The data to support the use of FGD in soil was not published and any material on the subject was "spotty and sketchy." Although they shared their concerns with KINCH and others (through their supervisor) about the possible risks associated with FGD uses, CUTHBERTSON and TAYLOR weren't invited to the meetings held on the publication. Prior to publication, they did "trim back" some of the language, but not to a level that CUTHBERTSON felt comfortable with.

CUTHBERTSON didn't know why her concerns about some of the beneficial uses of CCW were not addressed in full. There was a big push at the time to recycle CCW. Marianne HORINKO, the former Assistant Administrator for OSWER, wrote a memorandum, which included the extolling the recycling of CCW. She also talked about the clean up of CCW and the Coal Combustion Products Partnership (C2P2) with the coal waste industry.

SAGER had a "chummy relationship" with some of the coal ash industry representatives. Some of these representatives included Ken Ladwig and David Goss. The emails between these individuals suggested to CUTHBERTSON they were like "college buddies." CUTHBERTSON didn't know what to make of the relationship.

It was common when a new administration took over at EPA to change the direction and goals of the agency. It was okay to encourage recycling and the beneficial uses of CCW, but she and her colleagues at EMRAD just wanted to make sure these uses were safe. For example, EPA gave an award to individuals from the C2P2 for the beneficial use of Coal Ash in cement by putting the mixture into plastic bags and selling it to customers at Home Depot. At the time, CUTHBERTSON emailed her supervisor Gary BALLARD citing a Harvard School of Public Health article indicating particulate matter like CCW caused a morbidity and mortality spike in humans. She never received any feedback about this possible safety risk.

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She vaguely recalled a 2003 email with Tracy ATAGI which spoke about EPA "speaking with one voice." CUTHBERTSON recalled ATAGI generally wanting to do the right thing when it came to science surrounding Coal Ash and its beneficial uses.

CUTHBERTSON was never told by her supervisors or other EPA management that she could not conduct a risk analysis or study related to CCW.

In July 2009, CUTHBERTSON's CCW work group began an assignment on the beneficial use of material in unlined landfills. The work assignment reached the work plan stage but no further. The ORCR Director Matt HALE ended the study before it even began and gave no explanation as to why he made this decision.

A week after HALE stopped the work assignment on the beneficial use of material in unlined landfills; the CCW workgroup was told that the beneficial uses were covered under the Bevel Exemption, which regulated disposal for beneficial use. CUTHBERTSON "scratched her head" because there was no logic to this decision. There were no studies to support the beneficial use of CCW in unlined landfills and HALE probably didn't want to do the study because he didn't want to know the answer.

CUTHBERTSON felt ignored and marginalized in her position at EMRAD. Mike CLIPPER probably felt the same way. Although TAYLOR agreed with CUTHBERTSON most of the time regarding the possible risks associated with some of the beneficial uses of Coal Ash, he probably didn't feel ignored because he worked well with SAGER, KINCH and others. CUTHBERTSON felt that she was marginalized under GRAVATT but not under JOHNSON.

As to the rule making based on the 2000 EPA Regulatory Determination, she believed that EPA management knew there may be problems with CCW beneficial use and were not comfortable with the Risk Assessment that was done. JOHNSON was heavily involved with setting up the revised Risk Assessment with the contractor RTI. The assessment was done on a "shoestring" budget. In October 2002, JOHNSON and CLIPPER narrowed down the number constituents identified in RTI's Risk Assessment from forty-one to about twelve. RTI's first draft of the narrowed down amount of constituents was very rough. JOHNSON, CLIPPER, BALLARD and KINCH reviewed the draft. A full probabilistic modeling was done with computers in 2003 and a draft Risk Assessment was in place in late 2003.

Although the draft Risk Assessment was done in late 2003, it sat idle until 2006. In 2006, it resurfaced and was included in a Notice of Data Availability (NODA) on the Disposal of Coal Combustion Waste in Landfills and Surface Impoundments for public and peer comments. CUTHBERTSON had no idea who decided to publish the NODA.

Prior to the NODA being released for public comment, it was circulated among the CCW workgroup. It was then sent to the Office of Management and Budget (OMB). After the NODA was approved by OMB, it was released for public comment. Thea JOHNSON oversaw the peer

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review process because CLIPPER was on a temporary detail to ORD. The peer review comments were obtained about a year ago.

CUTHBERTSON neither heard nor was told that the EPA was going to suspend CCW rulemaking. She didn't have many dealings with the political side of EPA.

Truett DEGEARE was in SAGER's group and he was generally concerned with ensuring that everything was technically sound.

CUTHBERTSON did not recall any specific concerns regarding HALE's comments at a Byproducts Summit. In summer of 2008, HALE told Lee HOFFMAN to cite the Green Book pertaining to something she was preparing for him. HALE believes that the Green Book is a great publication.

CUTHBERTSON voiced some concerns pertaining to the radioactive content in a form of CCW called fly ash. Fly Ash was "scantily" researched under FGD. FGD was essentially limited to Bottom Ash. It was determined by the EPA in Research Park Triangle (RTP), NC that there were radioactive particles in fly ash but not enough to be pose a safety risk; however, no one did a serious and rigorous assessment if someone resided close to where fly ash was stored or used. CUTHBERTSON raised concerns repeatedly to GREVATT and others. She provided examples of radiation levels at some Superfund sites and how the radiation in fly ash was comparable or worse. No additional assessments or studies were pursued due to time constraints.

CUTHBERTSON accepted a temporary detail to ORD because GREVATT didn't assign her much work. She believed that he wanted to look good to upper management and didn't want her voicing safety concerns about the beneficial uses of CCW.

The OMB objected to the EPA's mercury model cited in the Coal Ash Disposal Report. It had non-detect numbers of mercury and OMB objected to this modeling and removed it from the report as if it wasn't done. CUTHBERTSON thought that the line in the report that said "mercury was not considered" was inaccurate and it should have been mentioned in the report that mercury modeling was done. However, CUTHBERTSON did agree with the substance of the report and how it turned out. This was the only OMB concern that CUTHBERTSON knew about regarding Coal Ash.

CUTHBERTSON recalled a Wall Street Journal article in either 2007 or 2008 about the beneficial uses of Coal Ash in which HALE cited sections of the Green Book and the beneficial uses of FGD. Again there was concern at EMRAD about HALE citing these publications.

It was a political level decision to continue with CKD rule making after the CCW rule making was finished. OSWER's Acting Assistant Administrator Susan BODINE decided to prioritize CCW rulemaking over CKD. HALE told CUTHBERTSON through Janet ENGLANDER to stop working on CKD. CUTHBERTSON was given no reason.

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