

DECLARATION OF GREGORY HELMS

I, Gregory Helms, make the following statement, with knowledge that any material false representation on my part, would subject me to a charge of perjury:

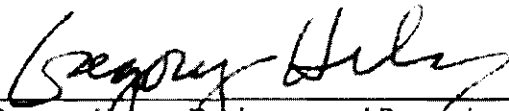
1. I presently serve as an Environmental Protection Specialist in the Waste Characterization Branch in the Materials Recovery and Waste Management Division in the Office of Resource Conservation and Recovery (ORCR) in the Office of Solid Waste and Emergency Response. I have served in this capacity since June of 1992 (initially as a Section Chief, and after October 1995, as staff). My immediate supervisor is James Michael, and my second level supervisor is Robert Dellinger.
2. I understand that I have been noticed for deposition in a matter before the Department of Labor entitled Cate Jenkins v. EPA. I further understand that, in this action, Dr. Jenkins is alleging that she was removed from EPA in retaliation for her whistleblowing. I have no knowledge concerning the reason for Dr. Jenkins' removal from the Agency, and I was not involved in that process in any way.
3. I recall learning in May or June of 2010 that Dr. Jenkins would be absent from work for an indefinite period (I was out of the office the week of May 10, 2010), and later learning in December 2010/January 2011 that she would not be returning to work at the Agency. Recently, in connection with my noticed deposition in a Merit Systems Protection Board proceeding involving Dr. Jenkins, I learned that my knowledge of her corrosivity characteristic regulation allegations against the Agency could be a relevant matter in that litigation.
4. In that regard, I recall receiving from Dr. Jenkins early in 2007 a document she identified in conversation as raising a concern about the corrosivity characteristic regulation (developed under the Resource Conservation and Recovery Act, or RCRA) and later in 2007, a document in which she was questioning the validity of the corrosivity characteristic and suggesting that this regulation's initial promulgation may have been tainted by some EPA malfeasance.
5. While I was not involved in the original promulgation of the regulation at issue, I was then, and still am, the Agency's resident expert on the RCRA corrosivity characteristic regulation. I understood that it was because of my expertise that Dr. Jenkins had solicited my opinion.
6. On my own initiative, I commenced to examine Dr. Jenkins' allegations, in the process developing something in the nature of a rough position paper. I never shared this paper with anyone, nor did I ever complete it, being unable to access the complete universe of relevant records.

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7. The corrosivity characteristic regulation was published in the Federal Register in 1980, and during my research I was unable to find some of the records reflecting the early consideration of this regulation. The records at issue may have been relevant to the questions raised by Dr. Jenkins.
8. From my research, I did not conclude that the Agency had done anything improper in its promulgation of the corrosivity characteristic regulation, and I remember a couple of water cooler-type conversations with Robert Dellinger, in which we shared this assessment. At the time of these discussions, I understood that Dr. Jenkins had made some public exposure of the materials that she had given to me, and that Mr. Dellinger had also received them.
9. Given the press of other business and Mr. Dellinger's and my concurrence that Dr. Jenkins' concerns did not warrant any further examination, the corrosivity characteristic matter simply ceased being of any importance. I never completed my rough draft report, and I never shared it with anyone.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on July 29, 2011.


Gregory Holms, Environmental Protection Specialist
Waste Characterization Branch
Materials Recovery and Waste Management
Division
Office of Resource Conservation and Recovery

<p style="text-align: center;">1</p> <p style="text-align: center;">UNITED STATES OF AMERICA MERIT SYSTEMS PROTECTION BOARD WASHINGTON REGIONAL OFFICE</p> <p>-----+</p> <p>Cate Jenkins, Ph.D., + Appellant, + MSPB Docket Number v. + DC-0752-11-0348-I-1 U.S. Environmental Protection + Agency, + Agency. +</p> <p>-----+</p> <p style="text-align: center;">Deposition of ROBERT W. DELLINGER Washington, D.C. Friday, April 22, 2011 10:03 A.M.</p> <p>Job No.: 1-198075 Pages 1 - 204 Reported by: Denice Z. Lombard, CSR</p>	<p style="text-align: right;">3</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>ON BEHALF OF APPELLANT:</p> <p>MICK HARRISON, ESQUIRE 205 N. College Avenue, Suite 311 Bloomington, Indiana 47404 (812) 361-6220 (Appeared by telephone.)</p> <p>--and--</p> <p>PAULA DINERSTEIN, ESQUIRE KATHRYN DOUGLASS, ESQUIRE TOM HASHAGEN, ESQUIRE PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY 2000 P Street, Northwest Washington, D.C. 20036 (202) 265-7337</p>
<p style="text-align: right;">2</p> <p>1 Deposition of ROBERT W. DELLINGER, 2 held at the offices of: 3 4 PUBLIC EMPLOYEES FOR 5 ENVIRONMENTAL RESPONSIBILITY 6 2000 P Street, Northwest 7 Washington, D.C. 20036 8 9 10 11 12 13 14 15 16 17 18 19 20 Pursuant to agreement, before Denice Z. 21 Lombard, Certified Shorthand Reporter and Notary Public 22 in the District of Columbia.</p>	<p style="text-align: right;">4</p> <p style="text-align: center;">A P P E A R A N C E S, continued</p> <p>ON BEHALF OF THE AGENCY:</p> <p>PAUL WINICK, ESQUIRE United States Environmental Protection Agency 1200 Pennsylvania Avenue, Northwest Ariel Rios Building, North, Room 7454C Washington, D.C. 20460 (202) 564-5687</p> <p>ALSO PRESENT: Cate Jenkins.</p>

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1 **withdraw that memo.**
2 Q Um-hm. But in terms of --
3 A **But I would say that she was pretty angry when**
4 **she was walking away saying that managers or**
5 **supervisors or whatever can get away with anything.**
6 Q Um-hm. And at that point in time had you
7 already told her that she was to be expecting documents
8 on this other case or other appeal that you had
9 mistakenly referenced?
10 A **Yes.**
11 Q So in your analysis of her state of mind had
12 you considered whether she might have been upset
13 thinking the Agency might be taking some other action
14 against her, perhaps retaliatory, that she had no
15 knowledge of?
16 A **I did not.**
17 Q Okay. If you go to page 5 of your declaration
18 you'll see a paragraph 26 there. And it references
19 Dr. Jenkins' complaints to the FBI, the Federal Bureau
20 of Investigation. Do you see that?
21 A **Yes.**
22 Q And first let me ask you, did -- at some point

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1 in time did you come to be aware that Dr. Jenkins had
2 made a complaint to the FBI, or more than one?
3 A **Yes.**
4 Q Okay. How did you come to know that?
5 A **I got a copy of it. I don't remember from**
6 **whom.**
7 Q A hard copy or e-mail?
8 A **I can't remember. When I read it, it was a**
9 **hard copy, so I might have printed it out.**
10 Q Okay. All right. So you took time to read
11 it?
12 A **I can't say I read every word.**
13 Q Okay. Was it a short document or a long
14 document?
15 A **Well, for me anything over 20 pages is long,**
16 **so I'd call it a long document.**
17 Q Okay. Did you make any notes regarding your
18 perceptions when you read it, any markups or comments
19 on the document or note pad or something?
20 A **It's possible. I don't remember, but it would**
21 **not be unlike me to do so.**
22 Q Okay. Would you have preserved those if you

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1 had created them, those documents?
2 A **I'm not sure.**
3 Q Okay. Do you recall doing this on paper I
4 take it rather than on a computer?
5 A **Yes.**
6 Q Did you communicate your thoughts on
7 Dr. Jenkins' FBI complaint to anyone?
8 A **Never had to.**
9 Q Your answer is no?
10 A **Right, no.**
11 Q Okay. Do you recall when you obtained this
12 copy of Dr. Jenkins' FBI complaint?
13 A **Not the specific date.**
14 Q Okay. Can you place it in a sequence of
15 events for us in terms of before or after May 3rd, to
16 begin with?
17 A **I'm not sure. I don't remember the time**
18 **frame.**
19 Q Do you remember what year the FBI complaint
20 was made by Dr. Jenkins?
21 A **No, I mean . . .**
22 Q It was relatively recent do you think?

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1 A **Relatively recent if you've been with the**
2 **agency for 30 some years, yeah.**
3 Q Okay. So you don't recall when the complaint
4 was filed.
5 A **I don't remember the dates.**
6 Q Okay. What was your reaction to the complaint
7 when you read it?
8 A **That the -- that I wasn't in the office of**
9 **solid waste when the original pH range was established**
10 **for the corrosivity characteristic, and that to the**
11 **best of my knowledge there had never been a petition**
12 **for that to be changed during the time that I was in**
13 **that division from 19 -- from 2001 until the present**
14 **time. And that -- those were my initial thoughts.**
15 Q Okay. So did you do sort of a scientific
16 critique of Dr. Jenkins' concerns --
17 A **No.**
18 Q Okay. Did you understand the gist of what
19 Dr. Jenkins' concern was in that complaint?
20 A **Generally.**
21 Q Could you summarize your understanding for us?
22 A **Well, she seemed to claim that it would be --**

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1 that somehow the workers in the -- at the --
2 Q World Trade Center?
3 A -- World Trade Center would not have been
4 exposed to the dust as much if the change in the
5 corrosivity characteristic would have been -- would
6 have been made.
7 But the corrosivity characteristic only
8 applies to liquids, not to solids, so I did not think
9 that that would -- would have done much of anything.
10 The concrete dust would be the pH that it was,
11 and if people didn't wear their respirators, they would
12 have been -- they would be exposed to that -- to
13 whatever pH that was.
14 Q Did you, in your own opinion, consider the
15 pH level of the World Trade Center dust to be harmful?
16 A I didn't really give it much thought.
17 Q You never looked at the data to see what the
18 pH levels were?
19 A I just sort of perused the document, and when
20 I was convinced that we had not done anything wrong, I
21 was done.
22 Q So when you say "we had not done anything

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1 wrong," do you mean you personally or that anyone in
2 your office at any time?
3 A The Agency.
4 Q So how did you conclude, without reviewing
5 sort of the numbers and the data and whether the
6 pH levels were harmful, how would you conclude that no
7 one in the Agency at any time had done anything wrong?
8 A Well, I guess I overstated what I, you
9 know . . .
10 Q Okay. Are you saying that basically you
11 concluded that you would have had no involvement in the
12 actions that Dr. Jenkins was critiquing?
13 A That would be the case.
14 Q Okay. But were you saying that you had done
15 enough of a thorough analysis to be able to exonerate
16 everybody else in the Agency?
17 A To the best of my knowledge we don't have
18 anybody in our division who worked on that
19 characteristic. That rule has been in effect since
20 1980.
21 Q Okay. Let me make my question a bit more
22 precise. I'm not meaning to limit my question to

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1 employees in your office at the moment.
2 I mean to ask whether you did a sufficient
3 analysis to determine whether no employee of EPA at any
4 time may have either made an error or engaged in
5 misconduct.
6 A I didn't extend that far.
7 Q Okay.
8 A But the only way that those -- you know, that
9 anything that would have happened, it seems to me, I
10 don't think that they build buildings with concrete.
11 And there's going to be concrete dust if it explodes,
12 so . . .
13 Q Well, didn't you understand from reading
14 Dr. Jenkins' complaint that her concern was that first
15 responders, you know, police and fire fighters and
16 others, attempting to do rescue operations and perform
17 investigations at the site of the 9-11 tragedy might
18 have been better protected by being required to use
19 supplied air or better respirators or some other
20 protective clothing than they were because the federal
21 agencies did not properly inform them of the dangers?
22 Wasn't that the gist of her concern?

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1 A Probably.
2 Q Okay. So now on the bottom of your pages 5 of
3 this declaration you say:
4 "Furthermore, EPA consistently advised first
5 responders to wear respiratory protection
6 because inhaling such dust poses a
7 substantial health risk."
8 That carries over to page 6. Do you see that?
9 A Um-hm.
10 Q Are you the author of that statement?
11 A Yes.
12 Q So you can tell me when EPA advised over time
13 the first responders to wear respiratory protection?
14 Can you?
15 A Oh, I probably shouldn't have said "EPA
16 consistently advised." It would have been their --
17 should have been their -- you know, their practices,
18 standard practice.
19 Q You're saying it would have been whose
20 standard practice?
21 A Anybody that would be going into those
22 buildings.

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1 Q So you're not saying someone -- at the moment
2 you're not saying someone would have advised them of
3 the danger, you're saying they would have known from
4 their own experience and practice?
5 A **That would be my expectation.**
6 Q Okay. So would you like to retract your
7 statement that "EPA consistently advised the first
8 responders to wear respiratory protection"?
9 A **I wouldn't say "EPA."**
10 Q Okay.
11 A **Yeah, I probably would change the sentence.**
12 Q Okay. And if you were to word it to be
13 consistent with your own knowledge, what would you say?
14 A **Well, the -- I don't know what you would call**
15 **the supervisory people, you know, that were there, but**
16 **the -- when there's heavy dust like that, they have --**
17 **the fire fighters and police have access to equipment**
18 **that would have provided them protection from this**
19 **dust.**
20 Q Are you aware that the U.S. EPA did issue a
21 public statement that basically downplayed the
22 air-inhalation health risk from the dust?

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1 A **Well, I know from watching television that**
2 **when people were coming out of the hole their**
3 **supervisors were telling them to keep those respirators**
4 **on.**
5 Q You want to answer the question I asked you?
6 A **Can you ask it again?**
7 Q Are you aware that EPA issued a public
8 statement that downplayed the risk, health risk of
9 inhaling the dust?
10 A **No, I'm not aware of it.**
11 Q Okay. Do you recall a controversy arising
12 about the White House Office of Environmental Policy
13 Editing EPA's public warning statement to take out the
14 meat of the warning?
15 A **No, I do not. I don't remember that.**
16 Q Okay. Now, on the last page of your
17 declaration, page 6 at paragraph 29 you say, or someone
18 says over your signature:
19 "Finally, I have examined what I understand
20 were Dr. Jenkins' disclosures of EPA
21 wrongdoing to the FBI, and I have found such
22 disclosures logically and factually flawed,

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1 and to the extent they purportedly
2 represented evidence of Agency wrongdoing,
3 have no meaning whatsoever."
4 Do you see that?
5 A **Yes.**
6 Q Are you the author of that exact language?
7 A **Not the author of the exact language. But**
8 **from my standpoint, the fact that our pH range of 2 to**
9 **12.5 is what it is, it wouldn't have changed anything.**
10 **The concrete dust is still concrete dust.**
11 Q I guess I don't follow your logic. If the
12 science showed that a pH of 12.5 or more was extremely
13 harmful, perhaps immediately dangerous to life and
14 health as they say, to humans, and the EPA standard
15 didn't reflect that fact, are you saying the fact that
16 concrete dust is concrete dust means no harm would come
17 from that air?
18 A **No, I'm not saying that at all. What I'm**
19 **saying is that the concrete dust is going to be at**
20 **whatever pH it is at. And whether we said that the**
21 **pH should be no greater than 12 or no less than 2.5 or**
22 **whatever, it wouldn't have made a difference to the**

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1 **concrete dust.**
2 Q Well, I think we're concerned about making a
3 difference to the first responders --
4 A **Well --**
5 Q -- and whether they would take more protective
6 measures.
7 A **-- as long as they had respirators on, they'd**
8 **be doing fine. It's not like somebody was out there**
9 **saying, oh, shoot, the pH of this stuff is not quite**
10 **12 -- over 12.5, so they don't need respirators.**
11 Q How do you know what people were saying to the
12 first responders?
13 A **Because I heard it on television. I heard the**
14 **supervisors of those people saying that, "Keep your**
15 **respirators on when you're dealing in the" -- you know,**
16 **when they were down in the hole.**
17 Q When you say "down in the hole," you mean sort
18 of the, what shall we call it, where the building
19 collapsed?
20 A **Yes.**
21 Q So have you read the testimonies of the first
22 responders?

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1 **A No, I have not.**
2 **Q Okay. Have you read the allegations of the**
3 **first responders in their lawsuits?**
4 **A No, I haven't.**
5 **Q Okay. How many times do you think you heard**
6 **someone talking about respiratory protection on the**
7 **television?**
8 **A Pretty much every time somebody came out of**
9 **there without having a respirator on.**
10 **Q Are you saying you were watching the**
11 **television day in and day out for this purpose?**
12 **A No, I'm not saying that.**
13 **Q Okay. So how many times did you observe this?**
14 **A Several.**
15 **Q Okay. Do you know what EPA's role was in the**
16 **response to the 9-11 incident at the World Trade**
17 **Centers?**
18 **A Not to any great extent.**
19 **Q Okay.**
20 **A I wasn't involved in it.**
21 **Q So would you know what representations were**
22 **made by EPA officials on scene at the time?**

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1 **A No.**
2 **Q Now, in your paragraph 29 you're saying**
3 **basically there's no meaning to Dr. Jenkins'**
4 **allegations that there's evidence of Agency wrongdoing,**
5 **but a moment ago when I asked you to clarify your own**
6 **analysis, I thought you limited it to your own**
7 **culpability, basically concluding that you would not**
8 **have been responsible.**
9 **But I thought you said you did not do such a**
10 **comprehensive analysis as to be able to exonerate prior**
11 **EPA employees who may have been involved in earlier**
12 **times regarding the standard.**
13 **So help me out here. Are you saying that, in**
14 **paragraph 29, that you're convinced that no one in the**
15 **Agency at any time engaged in wrongdoing, or are you**
16 **saying what you told me earlier, that you're convinced**
17 **that you had no responsibility for any errors and**
18 **perhaps no one in your current office did?**
19 **A Well, and we have never had a petition to**
20 **change that regulation.**
21 **Q Before you give me that elaboration, try to**
22 **give me a direct answer to my question first. Should I**

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1 repeat it for you?
2 **A Okay. I do not feel culpable, and I don't**
3 **think anybody else should feel culpable of that because**
4 **there has been -- let's see, it's 2011 now. So it's**
5 **20 -- 2001; 21 years, and nobody to my knowledge has**
6 **asked that that particular test be changed.**
7 **And, as I mentioned earlier, the test applies**
8 **only to liquids. It doesn't apply to solids. So it's**
9 **irrelevant.**
10 **Q So you are saying now that you believe that**
11 **your analysis is sufficient to say that no one employed**
12 **by EPA at any time in this process from 1980 or**
13 **whatever on made an error or has any liability or**
14 **engaged in misconduct?**
15 **A The only error that would have been made was**
16 **that they did not apply the corrosivity characteristic**
17 **to liquids.**
18 **Q Okay. And you think there was an error in**
19 **that regard?**
20 **A Well, I don't know whether it was an error or**
21 **not.**
22 **Q Okay. There was plenty of water at the Trade**

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1 Center site, right?
2 **A I don't know what you're asking about.**
3 **Q I thought you were watching the television as**
4 **the folks came out of the hole where the building**
5 **collapsed. You didn't see them pouring water from the**
6 **fire trucks trying to put out the blazes that went on**
7 **for months in there?**
8 **A Yes. But they weren't breathing liquid**
9 **material.**
10 **Q That's not my question. That's not my**
11 **question, sir.**
12 **My question is, there was a lot of water at**
13 **the Trade Center site during this response, yes or no.**
14 **A I don't recall.**
15 **Q Okay. You didn't see the fire fighters**
16 **pouring the water on the ruins?**
17 **A I did, but in a relative sense. I don't know**
18 **how much water that would be relative to --**
19 **Q Okay. Did you review any of the data on water**
20 **that was running off the site or was being discharged**
21 **into the --**
22 **A No, I didn't.**

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1 Q Okay. Do you know whether, when EPA first
2 approved this corrosivity-characteristic standard, that
3 they accurately represented the international standard
4 for the same issue, the corrosivity?
5 A I'm not -- I was not party to -- you know, to
6 that. And as I say, we have never had any type of a
7 petition for that to be changed.
8 Q Is your answer "I don't know"?
9 A Yeah, I'll take an I don't know.
10 Q Okay. You're not really saying, in the logic
11 of your answer, that because a practice continues for a
12 long period of time that it's necessarily safer or
13 legal?
14 A No, I'm not saying that.
15 MR. HARRISON: Okay. Let's take a short break
16 and perhaps Ms. Dinerstein and Ms. Douglass can give me
17 a call.
18 (Recess taken.)
19 MR. HARRISON: Let's go back on the record.
20 Mr. Dellinger, you had explained your
21 conclusion that Dr. Jenkins' concerns about errors in
22 the corrosivity standard not having any real

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1 significance for the protection of the first responders
2 at the World Trade Center, as I understood your
3 testimony, primarily because it was a standard that
4 applied to liquids.
5 Q Do you have any medical training or knowledge
6 by any chance?
7 A No.
8 Q Did you consult with any medical doctor or
9 toxicologist, epidemiologist or anything before forming
10 your opinion?
11 A No.
12 Q Okay. Do you know whether, when this type of
13 dust from, in this case, the demolition of the World
14 Trade Center is breathed in to the respiratory system,
15 whether it in fact becomes a liquid in the human body
16 and becomes an acid or a base and can cause damage that
17 way?
18 A Sure.
19 Q Was that a "sure"?
20 A Yeah.
21 Q So that's sort of an obvious thing? So I take
22 it your opinion wasn't meant to be that the dust is

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1 harmless when breathed in.
2 A No.
3 Q Okay. Now, let me ask you, you had indicated
4 in your prior testimony that you weren't recalling
5 whether you had made notes in your review of and
6 critique of Dr. Jenkins' disclosures.
7 Let me have my colleague, Ms. Dinerstein, show
8 you a document that I believe is something that you
9 marked up. It's a long document of more than a hundred
10 pages I believe. And I first want to see if you
11 recognize it.
12 A Yeah, that's my handwriting.
13 Q Okay. So if you would just sort of flip
14 through that and tell me whether in fact now that we
15 have the document in front of us you can say that you
16 made some fairly numerous remarks on this document?
17 A Yeah, I mean, not -- I mean, I guess you could
18 say fairly numerous.
19 Q Okay. Well let's take an example, if you
20 would turn in to page 33. Let me know when you've
21 found that page.
22 A Yeah, I'm there.

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1 Q Okay. Do you see a number of handwritten
2 marks or comments on that page?
3 A Yes.
4 Q Okay. And are those all your handwriting?
5 A Yes.
6 Q So it looks to me like you've got a fairly
7 lengthy handwritten remark at the top referring to
8 Footnotes 179 and -80, or maybe that's two different
9 marks; you've underlined some places; you've marked in
10 the margins; you've got looks like three remarks down
11 in the left-hand column and another at the bottom.
12 Do you see that?
13 A Um-hm.
14 Q Okay. Now, the remark you made at the top --
15 and I'm going to try to read your handwriting, and I'd
16 like you to correct me if I misstate it. It appears to
17 be:
18 "Someone could easily have misinterpreted
19 this language assuming eyes were more
20 sensitive than skin and did not refer to the
21 sources of information cited below."
22 Is that a fair reading?

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1 A Yeah.

2 Q Okay. And you wrote that?

3 A Yeah, that's my handwriting.

4 Q Okay. And it looks like you're referring to

5 the text of Dr. Jenkins' statement just below that, and

6 also a "Looks like an excerpt from another document she

7 inserted" that's underlined there.

8 What did you mean by that remark?

9 A I don't remember.

10 Q Okay. Did you come to know that Dr. Jenkins

11 had made some report of her concerns to the Congress of

12 the United States?

13 A I don't remember.

14 Q You don't remember if you ever came to know

15 that?

16 A I don't remember that I knew that. It's

17 possible that I knew it at one time. I don't remember.

18 Q Do you know it now?

19 A I don't think so.

20 Q Okay. So sitting here today you've never been

21 told whether Dr. Jenkins reported to Congress some of

22 her concerns?

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1 A I didn't say that. I said that I don't

2 remember that I was told that.

3 Q Okay. So you're saying you can't say either

4 way based on your memory.

5 A Right.

6 Q Would you ever have received any copies by

7 e-mail or a hard copy of Dr. Jenkins' communications or

8 concerns that she sent to Congress? Do you think you

9 may have actually been copied on that?

10 A I'm not sure.

11 Q Okay. If you had been, would you have

12 preserved that in your records or might it have been

13 discarded?

14 A The only way I could find that out is

15 searching through my files.

16 Q Okay. I guess I'm more asking what your

17 practice and procedure would be if you received a

18 document where one of your employees had expressed a

19 concern to Congress, particularly about something of

20 the import of the World Trade Center tragedy and EPA

21 maybe having not done what it could have done to

22 protect the first responders, would you not have

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1 preserved that?

2 A I don't recall having been told.

3 Q You said that already. My question at the

4 moment is would it be your practice to preserve

5 documents like that if you'd received them?

6 A Possibly. I mean, it all depends.

7 Q Would you agree with me that the issue of

8 whether the first responders were adequately protected

9 is an important matter in the public interest?

10 A Yes.

11 Q Okay. You agree with me that exposure to this

12 World Trade Center dust could be harmful to the health

13 of the first responders?

14 A Absolutely.

15 Q Do you recall in the March, April of 2010 time

16 period, last year, that Dr. Jenkins sent to you, to

17 Mr. Michael and others, e-mail correspondence that

18 referenced the status of the World Trade Center

19 litigation and referenced her prior FBI complaints and

20 her potential involvement in the World Trade Center

21 litigation?

22 A I don't remember -- I don't remember that.

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1 Q If you'd received such an e-mail would it

2 still be preserved on your computer?

3 A I don't know how long ago -- in other words, I

4 don't know how long they keep those messages on the --

5 in the database.

6 Q Do you know -- pardon me. Go ahead.

7 A So I can't answer the question.

8 Q Do you know whether your e-mail system, either

9 automatically or allowed for you to download your

10 e-mails on the hard drive of the computer with you work

11 with?

12 A Well, I can always copy the material and then

13 put it on a -- put it in a file or something.

14 Q Okay. Have you taken any action to delete any

15 of your e-mails regarding Dr. Jenkins since May the

16 3rd?

17 A From Dr. Jenkins or about?

18 Q Either.

19 A I don't remember.

20 Q Okay. It seems to matter to you which way I

21 was asking the question. Is there a reason that would

22 matter?

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1 **A Well, ask the question again and then we'll --**
2 Q Well, let me ask it both ways. One way would
3 be, have you deleted any e-mails from Dr. Jenkins since
4 May the 3rd?
5 **A Not that I'm aware of.**
6 Q Are you saying you would have to have done it
7 inadvertently if it happened, or that you may have done
8 it intentionally and that you don't remember?
9 MR. WINICK: Just for clarification purposes,
10 are we talking about May the 3rd, 2010 here?
11 MR. HARRISON: Absolutely.
12 THE WITNESS: I mean, it would depend upon the
13 nature of -- when I delete stuff, I delete, you know,
14 on the basis of whether -- you know, whether I
15 absolutely need a document or not, or just to, you
16 know, have a record of it for some period of time, you
17 know, because something could come up, you know, and I
18 would need that particular e-mail.
19 So I can't state with certainty what I would
20 do, because it has to do with the content of the
21 e-mails.
22 BY MR. HARRISON:

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1 Q So are you saying that you do delete some of
2 your e-mails from time to time before the system
3 administrator would sort of clean them off?
4 **A Oh, yeah.**
5 Q Okay. And at the moment you're not recalling
6 either way whether some of Dr. Jenkins' e-mails may
7 have been deleted since May the 3rd, 2010?
8 **A Yeah, I don't know one way or the other.**
9 Q Okay. And I believe you indicated in your
10 testimony, but let's be sure in this context.
11 No one in the EPA or from EPA counsel's office
12 or the Human Resources people have directed you to make
13 a point of preserving your e-mail or other records that
14 relate to Dr. Jenkins?
15 **A Not that I recall.**
16 Q Has anyone spoken to you at any time regarding
17 the issue of Dr. Jenkins' reports and disclosures being
18 used or potentially used in the World Trade Center
19 litigation?
20 **A No.**
21 Q Were you aware of the possibility that
22 Dr. Jenkins might be a witness in the World Trade

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1 Center lawsuits?
2 **A I guess anything's possible.**
3 Q Okay. You knew that she had raised concerns
4 about the failure of EPA to take all the actions it
5 could have taken to protect the first responders, at
6 least through the FBI complaints that you read, right?
7 **A What I remember most was the work that she did**
8 **on asbestos.**
9 Q Okay, but you're not saying asbestos as it
10 relates to the corrosivity standard are you?
11 **A No, I'm just saying those are the materials**
12 **that I remember, that I remember the most.**
13 Q Okay.
14 **A I did not pay a lot of attention to the**
15 **corrosivity activity.**
16 Q You mean apart from marking up this 134-page
17 document?
18 **A Yeah, I mean, I needed to read it and get a**
19 **sense for what was in it. I didn't read all the pages,**
20 **because there aren't any marks from, you know, a whole**
21 **bunch of pages back. But I kind of got what I needed.**
22 **Or at least what I thought I needed.**

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1 Q Okay. So what are you saying? You only read
2 like 10 pages in the 134-page document?
3 **A No, I've got some stuff on page 45 and**
4 **whatever. I don't remember exactly where I left off.**
5 Q Okay.
6 **A 50 -- well, I read the entire document, but I**
7 **didn't read all the references. In other words, there**
8 **are no marks on the references.**
9 Q Understood.
10 **A So I guess I read the -- well, I can't say I**
11 **read the whole document, all hundred and some pages,**
12 **because I only read 50 some of it.**
13 Q Is it fair to say that it's within your
14 knowledge that Dr. Jenkins has been what we call
15 informally a whistleblower over the years?
16 **A Yes.**
17 Q And would it be a fair characterization to say
18 that you would have had knowledge of Dr. Jenkins'
19 whistleblowing throughout your tenure and being in your
20 chain of command?
21 **A Yes.**
22 Q You had made clear in your prior testimony, as