



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

NOV 9 2001

The Honorable Elaine Kaplan  
Special Counsel  
United States Office of Special Counsel  
1730 M Street, N.W., Suite 300  
Washington, D.C. 20036

OFFICE OF THE  
ADMINISTRATOR

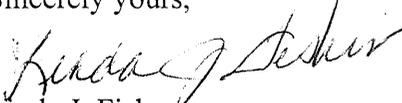
Dear Ms. Kaplan:

On June 27, 2001 the U.S. Office of Special Counsel referred to the Environmental Protection Agency (EPA) allegations of improprieties by an EPA Region 4 On-Scene Coordinator (OSC) at the Flura Chemical Removal Site in Newport, Tennessee. The Administrator's Office forwarded this matter to EPA's Office of the Inspector General to conduct an investigation. This investigation was completed on October 25, 2001. Pursuant to the authority delegated to me, I am forwarding to you a copy of the completed report.

As required under 5 U.S.C. § 1213(d) the attached report includes a summary of the information that gave rise to the investigation, a description of the conduct of the investigation, a summary of the evidence obtained, and a listing of any violation or apparent violation of law, rule, or regulation. Since the investigation did not find evidence to substantiate any violation of law, rule, or regulation no further action is necessary.

The Agency takes matters concerning employee safety and health very seriously. In learning from this incident, Region 4 has improved the procedures for handling chemicals being prepared for disposal. Specifically, Region 4 responded to this matter by reinforcing the explicit procedures that require Flura Chemical Site personnel to confirm the compatibility of individual chemicals in the process of combining them in a disposal container.

Sincerely yours,

  
Linda J. Fisher  
Deputy Administrator

Enclosure

cc: Marianne Horinko, OSWER  
Stanley Meiburg, Region 4  
Nikki Tinsley, OIG



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

MEMORANDUM

OCT 25 2001

THE INSPECTOR GENERAL

**TO:** Christine Todd Whitman  
Administrator

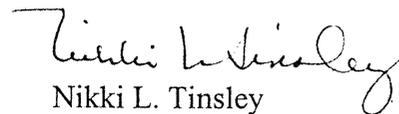
**SUBJECT:** Office of Special Counsel File No. DI-01-1150

On June 27, 2001, the Office of Special Counsel referred to the Environmental Protection Agency (EPA) allegations of improprieties by an EPA Region 4 On-Scene Coordinator at the Flura Chemical Removal Site in Newport, Tennessee. Your office requested that the Office of the Inspector General conduct a review of the matter. The Office of Special Counsel granted the Agency a 60-day extension to October 30, 2001, to issue the report required by 5 U.S.C. § 1213(c). Now that the investigation has been completed, I am forwarding the attached report to you for your consideration and so that you can forward the report to the Special Counsel in accordance with 5 U.S.C. § 1213(d).

The report includes a summary of the information that gave rise to the investigation, a description of the conduct of the investigation, a summary of the evidence obtained, and a listing of any violation or apparent violation of law, rule, or regulation. These satisfy the reporting elements under 5 U.S.C. § 1213(d) with the exception of the last, which requires a description of any action taken or planned as a result of the investigation. Since the investigation did not substantiate a violation of law, rule, or regulation, no further action appears necessary.

Please note that 5 U.S.C. § 1213(d) also requires the final report to be signed by the head of the agency; however, the Office of Special Counsel advises that you may delegate signature authority to another official. Please also note that the Special Counsel is required by law to transmit a copy of the final report, along with any comments by the complainant and the Special Counsel, to the President and appropriate Congressional oversight committees. 5 U.S.C. § 1213(e)(3).

If you have any questions concerning this matter, feel free to contact me at (202) 260-3137.

  
Nikki L. Tinsley

Attachment

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY



OFFICE OF THE INSPECTOR GENERAL  
OFFICE OF INVESTIGATIONS  
REPORT OF INVESTIGATION

DEAN ANTHONY ULLOCK

CASE NO. 2001-4005

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Approvals:

  
Special Agent

  
Acting Divisional Inspector General

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**OFFICE OF THE INSPECTOR GENERAL  
OFFICE OF INVESTIGATIONS**

OCT 25 2001

OI FILE NO.: 2001-4005

DATE:

REPORT OF: Eugene P. Mullis  
Michael A. Hill

OFFICE: Central  
Investigations Division

**SECTION A--SUMMARY**

This investigation was opened based on a referral by the U.S. Office of Special Counsel dated June 27, 2001, concerning alleged improprieties by an Environmental Protection Agency (EPA) Region 4 On-Scene Coordinator (OSC) at the Flura Chemical Removal Site ("Flura" or "the site") in Newport, Tennessee. (Exhibit 1). CHRISTOPHER A. MILITSCHER, an EPA Region 4 OSC, alleged that DEAN ANTHONY ULLOCK, Lead OSC at Flura, violated: (1) the Flura Health and Safety Plan ("Safety Plan"); (2) the "Off-Site Rule" under section 121(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9621(d)(3), implementing regulations at 40 C.F.R. § 300.440; and (3) hazardous material shipping and transportation requirements under 49 C.F.R. Parts 143 and 173.

This investigation was conducted by the EPA Office of Inspector General (OIG), involving staff from the Office of Investigations and Engineering and Science Staff, as well as the Department of Transportation (DOT) OIG. The investigation consisted of a review of records concerning EPA's response activity at the Flura site and interviews of witnesses identified by MILITSCHER, including EPA, U.S. Coast Guard, and EPA contractor personnel. The investigation did not find credible evidence to substantiate the allegations.

**Background**

The Flura site, operated by the FLURA CORPORATION, synthesized fluoridated bromine compounds, using a large volume and variety of chemicals in its operations. The types of chemicals used at the site included caustics, flammable liquids, oxidizers, reactive compounds, volatile organic compounds, and halogenated compounds. In March 2000, pursuant to section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6973, EPA ordered the facility to cease operations, and EPA began response actions under CERCLA. EPA is the lead agency for the response action with assistance from the U.S. Coast Guard (USCG) and the Agency for Toxic Substance and Disease Registry (Exhibit 1).

EPA began emergency removal actions at the site in approximately March 2000. At that time, the Lead OSC was MICHAEL R. TAYLOR. TAYLOR had requested the assistance of MILITSCHER because of his technical expertise. In October 2000, ULLOCK replaced

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TAYLOR as the Lead OSC and MILITSCHER remained as an OSC at Flura because of his technical expertise (Exhibits 3 and 4).

### Alleged Safety Plan Violations

Occupational safety and health standards for hazardous waste operations and emergency response are set forth at 29 C.F.R. 1910.120. Employers involved in hazardous waste removal operations must develop and implement written safety and health plans to enable their employees to identify, evaluate, and control safety and health hazards, and provide for emergency response. The safety plan addresses the safety and health hazards of each phase of site operations and includes the requirements and procedures for employee protection, including the use of personal protective equipment, air monitoring requirements, site control measures, decontamination procedures, and emergency response procedures. While the plan acts as a guide for safety and emergency response procedures, it does not address day-to-day technical operations of a removal site nor does it address procedures for handling specific chemicals.

MILITSCHER alleged ULLOCK violated the Flura Safety Plan, as well as provisions of the National Contingency Plan, the governing regulation for CERCLA response actions, and engaged in reckless and negligent behavior on three separate occasions during February, 2001.

**a. Incident on February 7, 2001:** In this incident, MILITSCHER alleged that he noticed ULLOCK and DAVID ANDREWS, Senior Project Chemist, Signal Corporation, moving a wheelbarrow carrying a large glass container of perchloro methyl mercaptan from one laboratory area of the facility to another laboratory area. According to the Office of Special Counsel referral, MILITSCHER alleged that the container was unsecured, which violated safety procedures that require hazardous substances to be firmly secured and stable when moved. However, the evidence does not support a finding that ULLOCK violated the safety procedures of the Flura Safety Plan.

In this incident, ANDREWS and ULLOCK were relocating several containers of perchloro methyl mercaptan from one laboratory area to another where they were being stored (Exhibit 5). According to ANDREWS, perchloro methyl mercaptan is not harmful to humans but does have a foul odor. Among other things, it is used as an odorizing agent in propane and other flammable gases (Exhibit 7).

As a threshold matter, the Flura Safety Plan is a boilerplate document that does not, for example, specifically cover procedures for transporting chemical substances from one area of a site to another. MILITSCHER did not identify with specificity which provision of the Safety Plan was violated. Nonetheless, ULLOCK and ANDREWS both assert that they were moving the container of perchloro methyl mercaptan in a secure fashion. ANDREWS stated the wheelbarrow was lined with an absorbent material. ULLOCK stated that the container was packed in Styrofoam and that two people -- ANDREWS and ULLOCK -- were moving it instead of one to ensure a spill would not occur.

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Moreover, the evidence does not support the contention that ULLOCK was acting with reckless conduct. MILITSCHER reported that, after he found ULLOCK and ANDREWS moving the container, he joined in to help. ANDREWS and ULLOCK did not recall MILITSCHER's direct assistance; however, ULLOCK recalled that MILITSCHER had walked by, noticed ANDREWS and ULLOCK moving the perchloro methyl mercaptan, smiled, and cautioned them not to drop the container as "it would stink from here to Knoxville" (Exhibit 6). According to ANDREWS, MILITSCHER did not raise the issue until several months later (Exhibit 5).

**b. Incident on February 20, 2001:** In this incident, MILITSCHER alleged that ULLOCK and ANDREWS had improperly bulked (mixed) hazardous and non-hazardous chemicals. When interviewed, ANDREWS admitted that he accidentally mixed 6 containers of barium hazardous waste with neutral organic and inorganic solids, thereby creating more hazardous waste for treatment or disposal. (Exhibit 5). ULLOCK claimed he was not present when this mixing occurred (Exhibit 6). While the resulting mixture may have generated additional hazardous waste, and may have caused EPA to incur additional costs to treat or dispose of the material, the mixing was the fault of contractor personnel (ANDREWS). There is no evidence this incident occurred as a result of reckless conduct by ULLOCK, the subject of this investigation.

**c. Incident on February 22, 2001:** In this incident, MILITSCHER alleged that ULLOCK acted in a reckless manner during an exercise involving the chemical treatment of pesticides and herbicides. When interviewed, ULLOCK admitted that he poured potassium dichromate (a rocket fuel) into a drum which reacted with the drum's contents, causing an eruption that spewed material in the immediate area (Exhibit 5).

He explained that the day before, site personnel were "solidifying" powder and/or liquid metal compounds in a process wherein the substance was mixed with concrete in buckets. The exercise was not finished by the end of the day and remaining metal compounds were left in place on a table for the next day (Exhibits 9, 10). The following day, MILITSCHER decided the site team should chemically treat pesticides. This exercise was to be done in the same room where the previous day's metal treatment exercise had taken place (Exhibits 2, 6, 9). Pesticides were collected and staged in the same room where the previous day's metal solidification exercise had taken place (Exhibit 10). During the staging process, some metal compounds from the previous day's activities were accidentally collected and staged with the pesticide chemicals. No one, including MILITSCHER, checked the identity of the staged chemicals. MILITSCHER directed the pesticide treatment process. He instructed ULLOCK to pour the pesticide compounds into drums. Other site personnel in the room were tasked with handing ULLOCK containers of chemicals to empty into the drum. During this exercise, ULLOCK was handed a container of potassium dichromate, which he poured into a drum. This potassium dichromate reacted with the contents in the drum and the liquid contents erupted out of the drum. Some of the personnel present were sprayed by the eruption (but all personnel present were wearing protective gear) and the immediate area was contaminated and required cleanup (Exhibits 10, 11). Afterwards, MILITSCHER accepted blame for the incident because he failed to perform a proper quality control of the chemicals (Exhibits 2, 6, 10).

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Rather than any single event, a host of problems appears to have contributed to this incident. There is no evidence that ULLOCK acted in a reckless manner and in fact MILITSCHER accepted responsibility for this incident (Exhibits 2, 6, 9, 10).

### Alleged Off-Site Rule Violation

Section 121(d)(3) of CERCLA requires that a response action involving the off-site transfer of any hazardous substance, pollutant or contaminant, shall take place only in a facility operating in compliance with the RCRA or other applicable Federal or State requirements [42 U.S.C. § 9621(d)(3)]. The implementing regulations for the so-called "Off-Site Rule" are set forth in the National Contingency Plan (NCP) at 40 C.F.R. § 300.440. The purpose of the Off-Site Rule is to avoid having wastes from CERCLA response actions contribute to present or future environmental problems by directing these wastes to management units determined to be environmentally sound. 40 C.F.R. 300.440 (Exhibit 12).

MILITSCHER alleged ULLOCK violated the Off-Site Rule when he improperly characterized six cylinders of fluorine as recyclable and had them transferred to TEXLA GAS COMPANY (TEXLA) in Sulphur, LA, to avoid having to comply with the treatment and disposal of hazardous materials. According to MILITSCHER, at least two criteria must be met in order to characterize waste material as recyclable. The manufacturer must be willing to take the material and have the capability to handle it, and the product must have some value. In addition, MILITSCHER alleged that ULLOCK improperly pressured the manufacturer into reclaiming the cylinders under threat of possible legal action by EPA. MILITSCHER also said ULLOCK was planning to ship an additional 29 cylinders of hydrogen fluoride as recyclable to SPECTRA Gases (SPECTRA) (Exhibits 1, 2).

On April 1, 2001, OSC ULLOCK wrote a memorandum to the file, subject: "Off-Site shipment of recyclable materials found at FLURA." The memorandum included a justification for the planned action, in pertinent part:

The primary reason for the shipment of the fluorine compounds is one of safety. Fluorine and Hydrogen Fluoride are extremely strong, reactive acid gases. Their handling and treatment on-site would be most dangerous to the clean up crews and could potentially expose the surrounding community to catastrophic release.

Another reason for off-site shipment is cost savings . . . The cost benefit has been calculated to save over \$300,000.00 in clean up expenses and many additional months of treatment time (Exhibit 3).

While there was disagreement between MILITSCHER and ULLOCK as to the proper method of dealing with the fluorine cylinders (Exhibit 16), ULLOCK appears to have taken appropriate steps to consult with, and receive the approval or endorsement of, management, legal counsel, and technical experts on the proper disposition of the cylinders (Exhibits 3, 15, 16, 17, 18, 20, 26). Among those within the agency with whom ULLOCK consulted, the consensus was on-site treatment of fluorine gas could be possibly dangerous, and certainly costly, and returning

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the cylinders to the original vendor was an appropriate course of action (Exhibits 16, 17, 18). The evidence indicates that ULLOCK relied upon technical advice from EPA environmental scientists to pursue the recycling option (Exhibits 16, 17). Additionally, ULLOCK obtained signed agreements from each vendor to ensure the vendor would comply with applicable requirements (Exhibit 3).

Moreover, ULLOCK appears to have taken appropriate steps to evaluate the condition of the cylinders, to identify the manufacturer of the cylinders, and to determine the manufacturer's willingness to accept delivery of the cylinders. The six cylinders were determined to contain fluorine and to be in good condition, with proper labels and date information (Exhibit 15). Based on the manufacturer's markings on the cylinders, it was further determined that the cylinders originated from a company which was later acquired by BRITISH OXYGEN COMPANY GASES, INC. (BOC) (Exhibit 15).

BOC indicated it was willing to accept the cylinders of fluorine and picked them up (Exhibits 3, 15, 19). Upon arrival, the cylinders were inspected by BOC officials, who then sent them to TEXLA for recycling. A BOC official stated that he considered this a routine practice and denied that BOC was pressured to take the cylinders (Exhibit 19).

For the same reasons set forth above, the planned shipment of 29 cylinders of hydrogen fluoride to SPECTRA GASES, the original vendor, appears appropriate. GEORGE FRANK MICK, who is responsible for contract work at the Flura site, stated in an interview that there was never any indication that SPECTRA was pressured into receiving the cylinders (Exhibit 11). ULLOCK obtained a similar agreement from SPECTRA regarding the proper recycling and reuse of the cylinders (Exhibit 11).

### **Alleged Transportation Regulations Violations**

MILITSCHER alleged the shipment of fluorine gas violated regulations governing the shipment of hazardous materials. Specifically, MILITSCHER alleged the cylinders of fluorine were not packaged properly, not specifically listed as a hazardous substance on the Bill of Lading, and the driver was not aware of the nature of the cargo. In addition, MILITSCHER said the condition of the cylinders did not meet the transportation requirements for shipment.

The following regulations apply to the shipment of the fluorine and hydrogen fluoride cylinders:

1. 49 C.F.R. § 173.34 (e)1(ii) requires that cylinders that may be charged or filled with a hazardous material and transported in commerce be inspected and retested (Exhibit 21).
2. 49 C.F.R. § 173.40 (d) requires that cylinders containing hazardous materials must be overpacked in a box if the cylinder has a wall thickness at any point of less than 2.03 mm (.080 inch) and if the cylinder does not have fitted valve protection (Exhibit 22).

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3. 49 C.F.R. § 301 (c) discloses that a container for which prescribed periodic retest has become due must not be charged and shipped until such retest has been properly made (Exhibit 23).

In an interview with GARY CROWSON, Production Manager and ERT Team Leader, BOC Gases, he stated that the cylinders did not have to be overpacked in a box because the cylinders were thicker than 2.03 mm. and they contained a fitted valve protection (Exhibit 24). Moreover, the cylinders were clearly listed as containing hazardous materials on the Straight Bill of Lading provided by BOC. The driver was aware of the nature of the cargo since he signed a BOC Hazardous Materials Shipping Manifest (Exhibit 19). In addition, photos show the cylinders and the truck were properly placarded to indicate the contents were hazardous (Exhibit 15). Moreover, because the cylinder markings indicated expired hydrostatic testing and inspection dates, ULLOCK consulted with the Department of Transportation to determine if the cylinders could be shipped. BEN SUPKO, Information Specialist for Hazardous Materials at DOT, advised that ULLOCK had requested an interpretation of hazardous materials standards and was advised that the transportation of hazardous materials in cylinders with expired inspection and testing dates was permissible as long as the contents would not be offered for commerce (Exhibit 25). Accordingly, the evidence suggests that the shipment of fluorine cylinders complied with applicable DOT transportation regulations.

### **Conclusion**

Having investigated the specific allegations made in this case, we did not find evidence to substantiate any violation of law, rule, or regulation.

SECTION B --ENTITIES AND INDIVIDUALS

1. SUBJECT: DEAN ANTHONY ULLOCK  
SSN: 560-13-9131  
DOB: November 25, 1959  
Life Scientist - On Scene Coordinator  
Waste Division  
EPA Region 4, Atlanta, GA  
PH: (404) 562-8757
  
2. COMPLAINANT : CHRISTOPHER A. MILITSCHER  
SSN: 120-48-8859  
DOB: January 5, 1956  
Life Scientist - On Scene Coordinator  
Waste Division  
EPA Region 4, Atlanta, GA  
PH: (404) 562-8771
  
3. WITNESSES  
  
MONICA L. ALLISON  
Marine Science Technician  
U.S. Coast Guard  
Newport, TN  
PH: (609) 724-0008  
  
DAVID LAMAR ANDREWS  
Senior Project Chemist  
Signal Corporation  
Crescent Spring, KY  
PH: (423) 675-8077  
  
GARY CROWSON  
Production Manager  
BOC Gases, Inc.  
Chattanooga, TN  
PH: (423) 870-7191  
  
MARY JOHNSON  
Attorney  
EPA Region 4  
PH: (404) 562-9526

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WITNESSES CONTINUED

GEORGE FRANK MICK  
Program Manager  
CMC Construction Company  
Nicholasville, KY  
PH: (859) 881-1463

DAVID B. MICKUNAS  
Chemist  
Environmental Response Team  
EPA, Edison, NJ  
PH: (732) 906-6913

GREGORY W. POWELL  
Environmental Scientist  
Environmental Response Team  
Cincinnati, OH  
PH: (513) 569-7537

RALPH DONALD RIGGER, JR  
Chief, Removal Operations Section  
EPA Region 4  
PH: (404) 562-8744

BEN SUPKO  
Information Specialist  
U.S. Department of Transportation  
400 Seventh Street, SW  
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MICHAEL RAY TAYLOR  
Former On Scene Coordinator ERR  
EPA Region 4  
PH: (404) 562-8744

VAUGHN CARTER WILLIAMSON  
On Scene Coordinator  
Emergency Response and Removal Branch  
EPA Region 4  
PH: (404) 562-8724

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RAY YOUNG WILLIS, JR.  
Project Manager  
Earth Tech Corporation  
Richmond, VA  
PH: (804) 358-5400

**SECTION C--PROSECUTIVE STATUS**

On October 3, 2001, GUY BLACKWELL, Assistant United States Attorney, Eastern District of Tennessee, was briefed on the facts and circumstances of this investigation. AUSA BLACKWELL declined prosecution based on no criminal violations being substantiated.

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EXHIBITS

Description	<u>Item no.</u>
Letter from Elaine Kaplan, Office of Special Counsel dated 6-27-01	1
EPA Form 2720-15, Interview of MILITSCHER, dated 8-1-01.	2
EPA Form 2720-15, Review of Records. at Flura Superfund Site, dated 8-6-01.	3
EPA Form 2720-15, Interview of TAYLOR, dated 8-27-01.	4
EPA Form 2720-15, Interview of ANDREWS, dated 8-8-01	5
EPA Form 2720-15, Interview of ULLOCK, dated 8-17-01	6
Description of Methyl Mercaptan. From Airgas Products website	7
Request For Authorization To Pay. A Hazardous Duty Pay Differential for MILITSCHER, dated 2-26-01.	8
EPA Form 2720-15, Interview of ALLISON, dated 8-7-01.	9
EPA Form 2720-15, Interview of WILLIAMSON, dated 8-8-01.	10
EPA Form 2720-15, Interview of MICK, dated 8-7-01.	11
Copy of 40 C.F.R. 300.440	12
Copy of Off-Site Rule Fact Sheet	13

EXHIBITS Continued

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Description	<u>Item no.</u>
Fact Flash on Hazardous Waste . . . . .	.14
EPA Form 2720-15, Interview of WILLIS, dated 8-7-01. . . . .	.15
EPA Form 2720-15, Interview of RIGGER, dated 8-16-01. . . . .	.16
EPA Form 2720-15, Interview of POWELL, dated 9-12-01. . . . .	.17
EPA Form 2720-15, Interview of MICKUNAS, dated 9-12-01. . . . .	.18
EPA Form 2720-15, Interview of CROWSON, BOC GASES, INC., dated 8-23-01. . . . .	.19
EPA Form 2720-15, Receipt of Email Records from ULLOCK, dated 8-20-01. . . . .	.20
Copy of 49 C.F.R. 173.34 . . . . .	.21
Copy of 49 C.F.R. 173.40 . . . . .	.22
Copy of 49 C.F.R. 301. . . . .	.23
EA Form 2720-15, Contact with CROWSON, dated 10-18-01. . . . .	.24
DOT IG F 1600, Interview of SUPKO, dated 8-20-01 . . . . .	.25
EPA Form 2720-15, Interview of JOHNSON, dated 9-25-01. . . . .	.26

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**EPA Form 2720-14 (Computer)**