



GSA Deputy Administrator

November 21, 2013

Ms. Carolyn N. Lerner  
Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 300  
Washington, DC 20036-4505

Re: OSC File No. DI-12-3233  
OSC File No. DI-13-4055

Dear Ms. Lerner:

This letter is the General Service Administration (GSA) response to your February 28, 2013 letter to the GSA Administrator in which you relayed the complaint of David Hendricks, a retired GSA employee (Office of Special Counsel (OSC) File No. DI-12-3233). Mr. Hendricks alleged that for many years GSA had engaged in misconduct in the area of worker safety at GSA's Bannister Federal Complex (BFC), Kansas City, Missouri. You directed the Administrator to conduct an investigation of his disclosures in accordance with the whistleblower provisions of 5 U.S.C. §1213. The Administrator delegated this undertaking to me on April 29, 2013.

After the untimely passing of Mr. Hendricks in July 2013, and in response to a GSA request for an extension of time to complete this investigation (which you granted), you advised us in a September 6, 2013 letter that a second complainant—Harold ("Jim") Daniels, a current GSA employee—had made disclosures similar to those of Mr. Hendricks. In particular, you noted that Mr. Daniels adopted in full the allegations made by Mr. Hendricks, and that "[b]ecause Mr. Daniels is one of the affected employees previously identified in my February 28, 2013 referral, I do not expect that this notification of his disclosures to my office should adversely affect the conduct or timing of GSA's investigation." You asked that we "consolidate the two disclosures" and "interview Mr. Daniels as the source of the allegations, and include any information you obtain from him in your report to OSC pursuant to 5 U.S.C. §1213(d)." You designated Mr. Daniels' disclosures as OSC File No. DI-13-4055, and you granted GSA a further extension to October 21, 2013. Later, on September 25, 2013, you revised the extension to November 5, 2013. Finally, on October 18, 2013, in light of the recent government shutdown, you granted a further extension to November 21, 2013.

Shortly after we received your initial notice on February 28, 2013, we approached the GSA Inspector General (IG) for assistance. The IG had previously conducted an investigation of BFC on topics similar to those raised by Mr. Hendricks and Mr. Daniels. The IG, however, declined to address the current complaints. We then began the process of obtaining, by contract, the services of a third-party, subject matter expert with the necessary technical expertise in the area of industrial hygiene – in particular, Certified Industrial Hygienists (CIH) – given that GSA did not have the requisite expertise within its ranks. Equally important, we wanted to ensure that an independent and neutral examination was conducted of the various disclosures made in this case. After a competitive selection process, we hired the firm of Clover Leaf Solutions, Inc. (Clover Leaf), headquartered in Albuquerque, New Mexico, a firm that had the necessary expertise and experience to conduct the investigation called for by the disclosures in this case.<sup>1</sup>

Clover Leaf's investigation included reviewing previous investigations conducted at BFC, including the GSA IG investigation noted above, and investigations conducted by the National Institute of Occupational Safety and Health and the Department of Energy. As described in its report, Clover Leaf examined medical and personnel files located at the National Archives and Records Administration record center in St. Louis, Missouri, and the GSA Consolidated Processing Center in Kansas City, Missouri. Clover Leaf conducted on-site interviews with the former GSA Heartland Region 6 Industrial Hygienist and the current Building Manager for Buildings 1 and 2 at the Bannister Federal Complex. On October 24, 2013, Clover Leaf also conducted a formal telephone interview with Mr. Daniels, one other current GSA employee, one former GSA employee and one non-GSA authorized representative of Mr. Daniels. Mr. Daniels had asked that the questions that were to be asked of him during his interview be provided to him, in writing, at least 48 hours in advance, which was done. Finally, Clover Leaf also did a walkthrough inspection of BFC. In total, Clover Leaf indicated they spent approximately 450 hours conducting its investigation and producing the report thereof that is attached.

In approaching the investigation of the disclosures made by Mr. Hendricks (and echoed by Mr. Daniels), we and Clover Leaf viewed your February 28, 2013 letter as describing eleven allegations, as are set out, sequentially, in the attached report of investigation. Summarizing the results of its examination of the eleven allegations, Clover Leaf notes:

“...it appears that GSA has consistently maintained a Health and Safety Program that was in compliance with regulatory requirements and consistent with the standard industrial hygiene practices in place at the time of the allegations. Results of this investigation indicate that there is no basis for the allegations that GSA had failed to comply with the requirements contained in the OSHA asbestos standards (29 CFR 1910.1001 and 29 CFR 1926.1101). (Allegations 4 and 6)  
The comprehensive medical exams administered by GSA went beyond the

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<sup>1</sup> Clover Leaf's government clients include the Department of Energy (DOE), U.S. Army Environmental Command, Kirtland Air Force Base, and the National Oceanic and Atmospheric Administration (NOAA). Clover Leaf has also performed work for the National Institute of Occupational Safety and Health (NIOSH), the U.S. Navy, the U.S. Marine Corps, the U.S. Coast Guard and the U.S. National Guard.

OSHA medical surveillance program requirements for asbestos and noise hazards. In addition to the chest x-ray and pulmonary function tests required by 29 CFR 1910.1001 or 29 CFR 1926.1101, and the audiometric testing required by 29 CFR 1910.95, the comprehensive, annual exam conducted for the complainant, and other Maintenance and Operations (M&O) employees, included the following:

- blood analysis (complete blood count, comprehensive metabolic panel, lipid panel, polychlorinated biphenyls),
- urinalysis,
- vision testing, and
- electrocardiogram (EKG)

These exams were performed for the complainant during employment with GSA. However, there is no regulatory requirement for GSA to continue providing medical surveillance for the complainant or other GSA employees following their retirement. (Allegation 5)

I have been briefed on the conduct of the investigation, and I have reviewed the results. I agree with the conclusion that the allegations presented to OSC lack merit. I believe the enclosed report is thorough, and I believe it fulfills the requirements of the law at 5 U.S.C. §1213. As such, I do not find any violation or apparent violation of law, rule or regulation, and therefore do not plan to take any further action.

Thank you for bringing this matter to the attention of GSA. If I may be of any further assistance, please let me know at your earliest convenience, or you may also contact Ms. Carol Schafer of the GSA Office of the General Counsel, [carol.schafer@gsa.gov](mailto:carol.schafer@gsa.gov) (202-501-0255).

Sincerely,



Susan F. Brita  
Deputy Administrator

Enclosure:  
Occupational Health Exposure Review—Report of Investigation

Small Projects and Reimbursable Services Division  
Office of Facilities Management and Services Program  
Attn: Mr. Herbert Hodgeman, Program Analyst  
GSA/Public Buildings Service  
1800 F St NW  
Washington, DC 20405

November 19, 2013

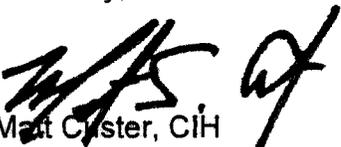
Dear Mr. Hodgeman:

The General Services Administration (GSA) was directed by the U.S. Office of Special Counsel (OSC) to conduct an investigation into a number of allegations made by a retired GSA employee concerning a potentially hazardous work environment at the Bannister Federal Complex (BFC) in Kansas City, Missouri.

In response to the employee's allegations, OSC requested that GSA investigate each allegation and provide a point-by-point report on the results of this investigation to OSC. GSA elected to utilize a third-party contractor to conduct an independent investigation into these allegations. Clover Leaf Solutions, Inc. (Clover Leaf) was retained by the General Services Administration (GSA) Office of Facilities Management and Services to conduct this investigation as the third party. Enclosed are the results of Clover Leaf's investigation. Specific responses to each of the allegations are included to support our conclusions and findings.

If you have further questions regarding this matter, please do not hesitate to contact Michael Oborny, CIH, CSP, of my staff, at telephone 505-350-5969, or via email at [moborny@cloversolutions.us](mailto:moborny@cloversolutions.us).

Sincerely,

  
Matt Custer, CIH  
Clover Leaf Solutions, Inc.

Cc: David S. Marciniak, PE, CSP  
Safety and Health Manager  
EHS Risk Management Division  
General Services Administration (GSA)

2013 NOV 21 PM 4:46  
SPECIAL COUNSEL  
WASHINGTON, D.C.

U505C HQD

PM 4:51

**Occupational Health Exposure Review for  
GSA Office of Facilities Management and Services**

**November 19, 2013**



## Occupational Health Exposure Review for GSA Office of Facilities Management and Services

### Executive Summary

The General Services Administration (GSA) retained the services of Clover Leaf Solutions, Inc. (Clover Leaf), to conduct an investigation into allegations by Mr. David Hendricks a former employee of the Bannister Federal Complex (BFC) in Kansas City, Missouri, that his health and the health of other GSA Maintenance and Operations employees had been endangered by the work environment at the BFC during the time of their employment. The investigation was prompted by direction from the U.S. Office of Special Counsel (OSC). At OSC's request the investigation also included similar allegations from a second GSA employee, Mr. Harold "Jim" Daniels. Clover Leaf, a contract Health & Safety firm, was retained to provide a third-party evaluation of allegations, independent of the GSA Office of Facilities Management and Services.

A total of 11 allegations were made by Mr. Hendricks, generally regarding 1) his perception that GSA has been out of compliance with OSHA requirements regarding employee exposure to hazardous chemicals, 2) issues with the manner in which previous studies and investigations by the GSA Office of Inspector General, DOE, and NIOSH have been performed, and 3) GSA employees not being offered compensation under a program similar to the DOE Energy Employees Occupational Illness Compensation Program.

Clover Leaf was tasked with conducting an investigation of the allegations raised by Mr. Hendricks to determine if they are true in whole or in part, and to determine the potential harm attributable to each allegation that is verified. This scope of work did not involve any new environmental or industrial hygiene monitoring studies, and was restricted to existing studies already conducted. The investigation required an analysis of the allegations, review of existing documentation related to environmental hazards at the BFC, and personal interviews with Mr. Hendricks, or proxies if Mr. Hendricks was unable or unavailable for interview. The deliverable for the investigation was a report addressing the eleven allegations.

The following are Clover Leaf's determinations made in this investigation, based on the material reviewed:

Based on this investigation, it appears that GSA has consistently maintained a Health and Safety Program that was in compliance with regulatory requirements and consistent with the standard industrial hygiene practices in place at the time of the allegations. Results of this investigation indicate that there is no basis for the allegations that GSA had failed to comply with the requirements contained in the OSHA asbestos standards (29 CFR 1910.1001 and 29 CFR 1926.1101). (Allegations 4 and 6) The comprehensive medical exams administered by GSA went beyond the OSHA medical surveillance program requirements for asbestos and noise hazards. In addition to the chest x-ray and pulmonary function tests required by 29 CFR 1910.1001 or 29 CFR 1926.1101, and the audiometric testing required by 29 CFR 1910.95, the comprehensive, annual exam conducted for the complainant, and other Maintenance and Operations employees, included the following:

- blood analysis (complete blood count, comprehensive metabolic panel, lipid panel, polychlorinated biphenyls),
- urinalysis,
- vision testing, and
- electrocardiogram (EKG).

These exams were performed for the complainant during employment with GSA. However, there is no regulatory requirement for GSA to continue providing medical surveillance for the complainant or other GSA employees following their retirement. (Allegation 5)

There is also no evidence for the allegation that GSA intentionally used a different B reader in 1991 to negate prior medical findings of pleural abnormalities. (Allegation 4) The differences in the findings, noted in Allegations 3 and 4, may have been the result of B reader variability and/or differences in the competency of the B readers. This determination can only be resolved through an independent review by a third-party, qualified B reader physician.

Several allegations (Allegations 1, 2, and 11) take issue with the manner in which previous studies and investigations by GSA, DOE, and NIOSH have been performed. The central argument in these allegations is that, if these studies had been done differently, the results would have concluded that GSA Maintenance and Operations (M&O) employees are currently experiencing a high incidence of illness and death from exposure to toxic materials associated with the DOE portion of the complex, hereafter referred to as the "Plant." No basis has been provided to support the complainants' claim that different investigative methods would have resulted in different conclusions. During this investigation, no new documentation has been provided that would contradict the methods and findings of the previous studies and investigations, or that would support a claim that GSA M&O employees currently are experiencing a high incidence of illness and death as a result of their exposure to toxic materials from the Plant. However, if the necessary data is available, a detailed analysis of morbidity and mortality patterns for M&O employees as a separate group might or might not indicate that M&O employees experience higher morbidity and mortality rates than the other study subjects or the general population.

Mr. Hendricks and Mr. Daniels allege that work done at Plant locations and fan rooms, water supply systems, and sewage systems, common to both the GSA-controlled side of the building and the Plant, exposed M&O employees to the same contaminants that affected Plant employees. (Allegations 7, 8, and 10) While it is acknowledged that the work described did occur, there is no direct evidence that M&O workers were exposed to the same contaminants as Plant workers. The NIOSH HHE report states that "Based upon the information we have obtained to this point, we believe that Bannister Federal Complex employees have no significant exposure from substances in use now or in the past at KCP." There is no direct evidence that M&O workers either were or were not exposed to contaminants from the Plant.

This investigation found no direct evidence that GSA Bannister Federal Complex employees in general, or M&O employees in particular, were exposed to toxic substances from the Plant at levels above the Permissible Exposure Limits (PELs), or that GSA failed to take sufficient actions to adequately protect M&O employees from health hazards originating from operations at the Plant. (Allegation 9) This allegation implies, without supporting evidence, that employees were exposed at or above a PEL. There is no documented evidence to either prove or disprove that any employees were ever exposed above a PEL during their career. GSA appears to have taken sufficient actions to identify likely potential occupational exposures for GSA workers, and to have taken the necessary steps to mitigate the identified potential hazards. These actions

have included hazard assessments, medical surveillance programs where appropriate, training, and issuance of personal protective equipment (PPE) where deemed necessary.

Mr. Hendricks implies in Allegation 10 that GSA employees who worked at the Plant should be included in a special cohort group eligible for compensation under the DOE Energy Employees Occupational Illness Compensation Program. Although some GSA employees at the Bannister Federal Complex may have sometimes worked at the Plant, they were not employees of the Department of Energy, its contractors and subcontractors, nor did they belong to one of the statutory Special Exposure Cohorts eligible for compensation under the Energy Employees Occupational Illness Compensation Program. As with other federal workers, these employees are provided workers' compensation coverage for employment-related injuries and occupational diseases under the Federal Employees' Compensation Act, which is administered by the Division of Federal Employees' Compensation (DFEC).

Although not eligible for compensation, Mr. Hendricks filed a claim for benefits under the DOE Energy Employees Occupational Illness Compensation Program for chronic beryllium disease (CBD), hypertension, hearing loss, and chronic obstructive pulmonary disease (COPD)/emphysema. Initially submitted on January 30, 2012, these claims were ultimately denied by the Department of Labor on June 13, 2013. Mr. Hendricks then requested a reconsideration of the June 13, 2013 denial. The request for reconsideration was denied on August 14, 2013, and the June 13, 2013 denial of benefits became final.

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## Acronyms

|         |  |
|---------|--|
| AFGE    | American Federation of Government Employees  |
| BFC     | Bannister Federal Complex  |
| BMI     | Body Mass Index  |
| CBD     | Chronic Beryllium Disease  |
| CFR     | Code of Federal Regulations  |
| CIH     | Certified Industrial Hygienist   |
| COPD    | Chronic Obstructive Pulmonary Disease  |
| CSP     | Certified Safety Professional  |
| CT      | Computed Tomography  |
| DCMWC   | U.S. Department of Labor Division of Coal Mine Workers' Compensation                     |
| DEEOIC  | U.S. Department of Labor Division of Energy Employees' Occupational Illness Compensation |
| DFEC    | U.S. Department of Labor Division of Federal Employees' Compensation                     |
| DLHWC   | U.S. Department of Labor Division of Longshore and Harbor Workers' Compensation          |
| DOE     | U.S. Department of Energy  |
| DOL     | U.S. Department of Labor   |
| EEOICP  | Energy Employees Occupational Illness Compensation Program                               |
| EEOICPA | Energy Employees Occupational Illness Compensation Program Act                           |
| EKG     | Electrocardiogram  |
| EPA     | U.S. Environmental Protection Agency   |
| FECA    | Federal Employees' Compensation Act  |
| FOH     | Federal Occupational Health  |
| GSA     | General Services Administration  |
| HHE     | Health Hazard Evaluation   |
| HSS     | DOE Office of Health, Safety and Security  |
| HVAC    | Heating, Ventilation, and Air Conditioning   |
| IG      | Inspector General  |
| KCP     | Kansas City Plant  |
| M&O     | Maintenance and Operations   |
| MSDS    | Material Safety Data Sheet   |
| NIOSH   | National Institute for Occupational Safety and Health                                    |
| NNSA    | National Nuclear Security Administration   |
| OSC     | Office of Special Counsel  |
| OSHA    | U.S. Occupational Safety and Health Administration                                       |
| OWCP    | U.S. Department of Labor Office of Workers' Compensation Programs                        |
| PA      | Posteroanterior  |
| PBS     | Public Buildings Service   |
| PCB     | Polychlorinated Biphenyl   |
| PEL     | Permissible Exposure Limit   |
| PFT     | Pulmonary Function Test  |
| PPE     | Personal Protective Equipment  |
| VOC     | Volatile Organic Compound  |

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## Introduction

In a letter dated February 28, 2013, from the U.S. Office of Special Counsel to the GSA Administrator, a retired GSA employee, Mr. David Hendricks (also referred to in this report as the complainant), made a number of allegations regarding the work environment at the Bannister Federal Complex (BFC) in Kansas City, Missouri.

The BFC describes the entire federally owned property located at East Bannister Road in Kansas City, Missouri. Within BFC are land and structures, predominantly on the east side of the property, that are owned by and under the control of the Department of Energy (DOE), and where DOE employees and contractors work (called the "Plant" in the complainant's allegations and this investigation report); and land and structures predominately on the west side of the property that are owned by and under the control of GSA and where GSA employees work. As shown in Figure 1, GSA Buildings 1 and 2 are contiguous to the Plant, although they are separated by fire walls, alarmed doors, and separate heating, ventilation, and air conditioning systems. However, as discussed in Allegations 7 and 8, there are sewage lift stations and rooftop mechanical rooms that are shared by the GSA and DOE controlled areas in Buildings 1 and 2, and the DOE Plant.

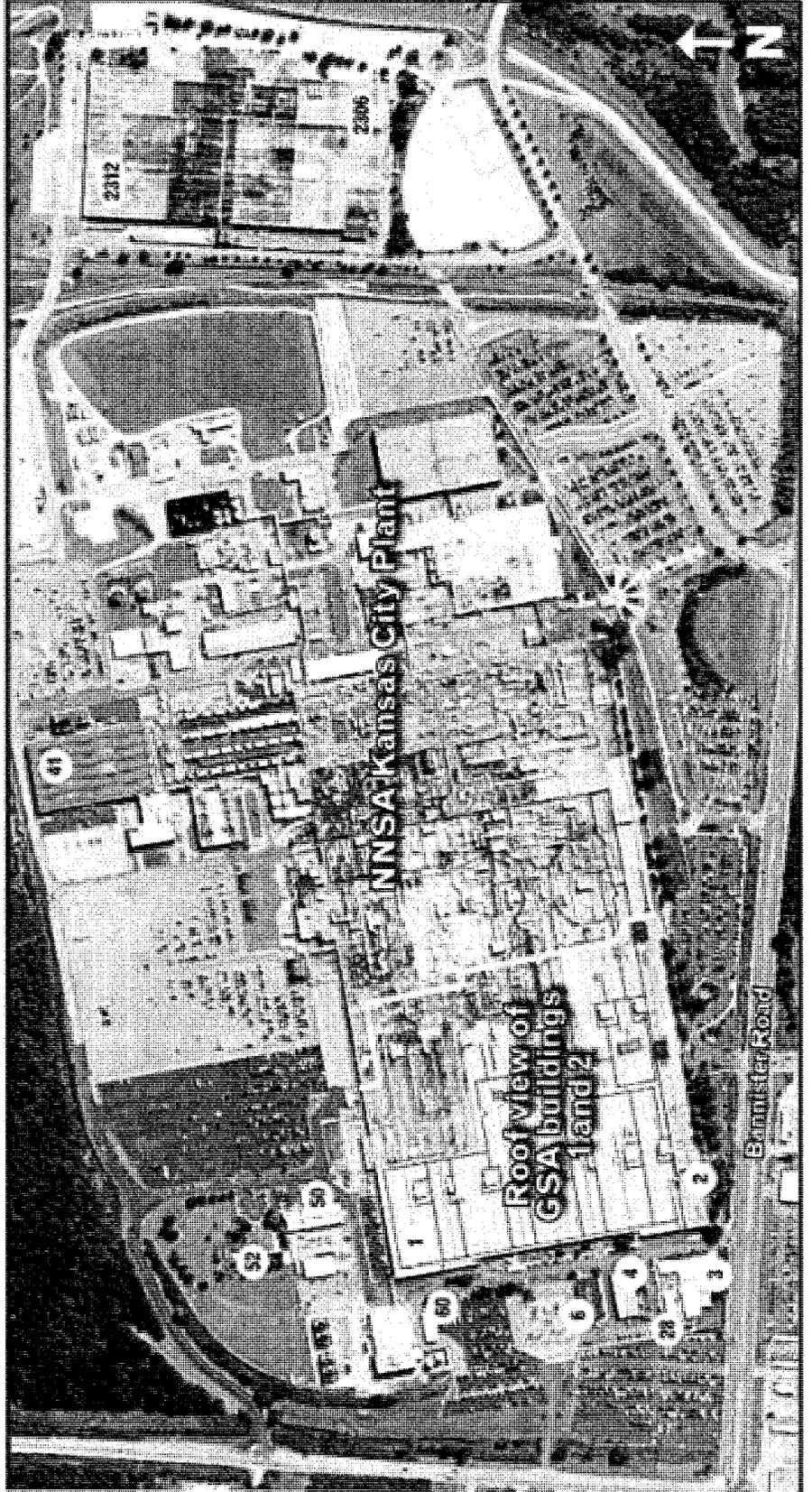
The contract scope of work tasked Clover Leaf Solutions, Inc. to conduct investigations into these allegations and determine if they are true, in whole or in part, and to determine the potential harm attributable to any allegation that is verified. Clover Leaf, a contract Health & Safety firm, was retained to provide a third party evaluation of allegations, independent of the GSA Office of Management Services. Subsequently, the OSC directed GSA to address the concerns of GSA employee Mr. Harold "Jim" Daniels, who adopted Mr. Hendricks' allegations. Each of the eleven specific allegations made by the complainants is addressed in the body of this report with a specific response to the allegation and with statements of fact to support the response.

Clover Leaf Solutions, Inc., is primarily a comprehensive industrial hygiene and safety consulting firm. Clover Leaf is experienced in providing high-level occupational health, safety, and environmental consulting services to federal clients. Clover Leaf has a staff of Certified Industrial Hygienists (CIH) with extensive occupational exposure assessment experience. Clover Leaf has provided extensive services to Department of Energy clients, namely Sandia National Laboratories, Los Alamos National Laboratory, and the DOE National Training Center, and, therefore, is familiar with DOE facilities, requirements, and policies. Since 2005, the Clover Leaf industrial hygiene department has focused on comprehensive workplace reviews and exposure assessments of chemical, biological, and physical hazards to ensure the protection of workers. Clover Leaf has performed thousands of occupational exposure assessments and historical hazards reviews to identify safety and health deficiencies at a wide range of worksites, including maintenance and industrial settings.



# Bannister Federal Complex map

3.15.10



Clover Leaf was tasked with conducting an investigation of the allegations raised by the complainant to determine if they are true, in whole or in part, and to determine the potential harm attributable to each allegation that is verified. This scope of work did not involve any new environmental or industrial hygiene monitoring studies, and was restricted to existing studies already conducted. The investigation required an analysis of the allegations, review of existing documentation related to environmental hazards at the BFC, and personal interviews with the complainant, or proxy if the complainant was unable or unavailable for interview. The deliverable for the investigation was a report addressing the eleven allegations. Clover Leaf investigated the allegations, reviewed BFC/GSA health records and pertinent operations information, conducted personal interviews with relevant individuals when possible, and has provided this report of the investigation.

The principal investigator on this investigation was Michael Oborny, CIH, CSP. The supporting investigator was Matt Custer, CIH. Both Mr. Oborny and Mr. Custer have extensive experience in exposure assessments, and have worked as employees and contractors to DOE facilities for 34 and 19 years, respectively.

The primary sources of information examined during this investigation included governmental agency reports, medical and personnel files obtained from both the National Archives and Records Administration and the Kansas City GSA Consolidated Processing Center, and the Injury/Illness Database provided by the former GSA Heartland Region 6 Industrial Hygienist.

Also reviewed were selected files from a group of 7,564 electronic files totaling 97,513 pages containing scanned pdf files of historical environmental, health, and safety documents for the entire GSA Heartland Region 6. These electronic files were categorized on an electronic spreadsheet under the following headings: Asbestos, Medical Employee Files, OSHA Reports, PCB Reports, Radon Reports, Training, Underground Storage Tanks, Environmental Site, Air Quality, and MSDS. Due to the sheer volume of documents, the list of names for the documents contained within each category were perused, and those documents that appeared to be relevant to this investigation were then examined in more detail. In some instances, files were mis-categorized or duplicate copies were found.

In general, during the relevant time period covered by the allegations, there was a lack of available documentation prior to the 1980s, and limited documentation from the 1980s. However, there was adequate documentation related to the medical surveillance program in the 1990s to investigate Allegations 3, 4, 5, 6, and 9, which were related to the GSA medical surveillance program offered to the complainants and other GSA Maintenance and Operations (M&O) employees.

In addition to the document review, the investigators conducted interviews with the former GSA Heartland Region 6 Industrial Hygienist, and the current Building Manager for GSA Buildings 1 and 2 at the Bannister Federal Complex. The investigators also participated in a telephone conference call, held on October 24, 2013, with three individuals who were coworkers of Mr. Hendricks. This group of three included two current GSA employees and one retired GSA M&O employee. Mr. Jim Daniels, who has also voiced the same allegations as those made by Mr. Hendricks, was one of the current GSA employees that participated in the conference call. Also present during this telephone conference call was a representative of Cold War Soldiers.

Discussions with the former Region 6 Industrial Hygienist included email exchanges, several telephone discussions, and an onsite interview at the Bannister Federal Complex during a site

walkthrough conducted on August 16, 2013. The purpose of these exchanges was to request additional information and/or clarification of previously submitted information.

Escorted by the Building Manager, Jamie Welte, the principal investigator conducted the walkthrough of GSA Buildings 1 and 2 at the Bannister Federal Complex on August 16, 2013. This walkthrough included an examination of the building support facilities jointly shared with the NNSA Kansas City Plant, including the building water supply, sewage lift stations, and the heating, ventilation, and air conditioning (HVAC) system. Special attention was given to the sewage lift stations and rooftop fan rooms referred to in Allegations 7 and 8.

Factors that hampered the gathering of data and evaluation of conditions during this investigation included the following:

- the death of Mr. Hendricks at the beginning of the investigation, resulting in no interview being conducted with him,
- anecdotal reports of exposures and injuries without documentation from GSA Maintenance and Operations coworkers who worked with Mr. Hendricks,
- the retirement and subsequent unavailability of many of the M&O coworkers of Mr. Hendricks,
- a lack of documentation prior to the 1980s, and
- limited documentation from the 1980s time-frame.

There is also a concern that the current physical layout of the BFC may not be the same as it was during the complainant's career, especially the rooftop layout of building air handling systems on both the GSA and the Plant sides of the building.

To ensure the accuracy of directly quoted statements from outside sources, the terms "xray" and "x-ray" are used interchangeably throughout this document. Likewise, the terms "B-reader" and "B reader" are used interchangeably for accuracy. Otherwise, this document uses the more commonly accepted formats: "x-ray" and "B reader". To maintain consistency with the directly quoted allegations in this investigation, the DOE Kansas City Plant (KCP) is referred to as "the Plant" in this document.

## Allegations and Responses

The following provides the investigators' response to each of the allegations that were made by Mr. Hendricks and adopted by Mr. Daniels, and which were contained in the Statement of Work for this effort.

Allegation 1: "In 2011, the National Institute for Occupational Safety and Health (NIOSH) conducted a health hazard evaluation (HHE) at GSA's request in response to concerns about adverse health effects possibly associated with contamination of soil and groundwater by the Plant. The evaluation did not include the Kansas City Plant (the Plant) or its employees, but only those who worked at GSA or a tenant agency other than the Plant."

Response 1: This statement is correct, but it must be pointed out that the study was specifically designed to address concerns of adverse health effects among GSA and tenant agency employees thought to be associated with the contamination of soil and groundwater by the Plant, and not intended to include the Plant or its employees. Worker safety and health issues at the Plant are under the jurisdiction of the DOE and are not the responsibility of GSA.

Although the NIOSH HHE did not include, nor was it intended to include, the Plant or its employees, during the approximate timeframe of the NIOSH HHE, the Department of Energy Inspector General (IG) conducted an audit of the environment and worker safety systems at the Plant in response to the same concerns that led to the NIOSH HHE. (Audit Report: IG-0839, Environment and Worker Safety Control Systems at the National Nuclear Security Administration's Kansas City Plant, September 20, 2010 (<http://energy.gov/ig/downloads/audit-report-ig-0839>). The IG report states the following: "In summary, we found that the Department [i.e., DOE], at the time of our review, had established and implemented controls designed to provide reasonable assurance that the environment and workers at the Kansas City Plant were adequately protected. Further, while we cannot provide absolute assurance, the results of our work indicated that the systems were working as intended." Consequently, although the NIOSH HHE did not include the Plant or its employees, the separate DOE IG audit was focused on the Plant and its employees, and determined that the workers at the Plant were adequately protected.

Allegation 2: "The HHE did not consider a subset of GSA Maintenance and Operations employees, including Plumbers-Pipefitters, Electricians, and Air Conditioning Mechanics, who performed work at the Plant (a group of which the complainant alleges he was a member)."

Response 2: This statement is true. The NIOSH study interviewed 214 former GSA and tenant agency employees, 72 current GSA and tenant agency employees, and 76 current and former Kansas City Plant employees. ([http://r6.gsa.gov/bannister/Reports/NIOSH%20Interim%20Report%204\\_13\\_2011.pdf](http://r6.gsa.gov/bannister/Reports/NIOSH%20Interim%20Report%204_13_2011.pdf)) Based on this interview group, an interim letter from NIOSH reported that no unusual patterns of disease were observed in the group. However, the HHE interim letter did not divide the interview group into subcategories for reporting purposes. Lacking information on the study methodology, it is not possible to determine the number of GSA Maintenance and Operations (M&O) employees in the study, and whether age, gender, or other factors, including occupation, were considered in analyzing the morbidity and mortality patterns in the interviewed group. In this case, the gathering of more information, and/or analyzing morbidity and mortality patterns for the M&O employees as a separate group, might or might not indicate that M&O employees experience higher morbidity and mortality than the other study subjects or the general population. It appears to be speculation on the part of the complainants that M&O employees are experiencing higher morbidity and mortality than the other study subjects or the general population.

Allegation 3: "In 1988, a chest x-ray of complainant taken as a part of medical monitoring of employees showed pleural changes, consistent with exposure to hazardous materials. Subsequent chest x-rays in 1989 and 1990 also identified pleural changes. GSA retained a different physician to review chest x-rays, and in 1991, the complainant's [Mr. Hendricks'] reading was normal. Four other Maintenance and Operations employees also had positive readings between 1988 and 1990, and negative readings in 1991."

Response 3: This statement is partially true and partially false. The changes in reader interpretations occurred with respect to asbestos exposure, never to exposure to "hazardous materials." Chest x-rays were being performed as part of OSHA 29 CFR 1910.1001 – Asbestos (General Industry) and 29 CFR 1926.1101 – Asbestos (Construction Industry). The report for the complainant's 1988 chest x-ray states the following: "Pleural changes were found consistent with asbestos exposure but no evidence for asbestosis (disease) was seen. For follow-up, employee should have yearly chest xray screening with B-reading. No work restrictions are required as long as personal protective equipment is properly used." Neither the

1988 report nor the subsequent reports through 1994 use the terminology “consistent with exposure to hazardous materials.” The only hazardous material named in any of the reports is asbestos. Typically, the reports use the terminology “consistent with asbestos exposure” or “suggesting prior asbestos exposure.” The complainant’s 1994 report uses the phrase “consistent with, but not strictly diagnostic of, asbestos exposure.”

In determining the basis of this allegation, the x-ray histories of the complainant, and of the four other M&O employees mentioned, were reviewed for the period of 1988 until 1994. During this period, occupational health services were provided by an Interagency Agreement with Federal Occupational Health (FOH), which is a component of the U.S. Public Health Service within the Department of Health and Human Services. Federal Occupational Health then contracted with third parties to provide radiology services, including the OSHA-required B reader review. During the period from 1988 through 1994, three different B readers were used, with changes in the B reader that was provided by FOH occurring in 1991 and 1994. The reading differences cited in the above allegation did occur, and were the subject of an ongoing series of memos and other communications between June 22, 1992, and August 4, 1993. These communications involved the complainant, representatives of the American Federation of Government Employees (AFGE), the GSA Regional Labor Relations Officer, the Director of the GSA Real Property Management and Safety Division, the Regional Director of Federal Occupational Health, GSA Safety and Environmental Management staff, and others.

Ultimately, issues associated with the medical surveillance x-ray procedures and B reader interpretations were never settled by GSA to the satisfaction of the complainant. The position of the Regional Director of FOH that was communicated to the complainant on 7/21/1993 by the Director of the GSA Real Property Management and Safety Division stated that “B-readings are subjective” and that it “is not unusual for two B-readers to have different findings on marginal changes.” (James J. Hoover, Director, Real Property Management and Safety Division to David Hendricks, Plumber-Pipefitter, Memorandum, July 21, 1993, Your Medical Surveillance File) In response to this memo, the Assistant and Principal Representatives of AFGE Local 2904 sent a rebuttal to Mr. Thomas Walker on 7/26/1993. This rebuttal questioned the competency of the physicians used by FOH and the medical decisions that they made.

As discussed above, it is important to note that the marginal changes observed were “consistent with asbestos exposure” or “suggesting prior asbestos exposure”, and also were “consistent with, but not strictly diagnostic of, asbestos exposure.”

Allegation 4: "Complainant contends that GSA failed to comply with Occupational Safety & Health Administration regulations contained in Title 29 of the Code of Federal Regulations, when it accepted the negative findings in the 1991 chest x-rays. He asserts that the abrupt change in findings was the result of the GSA's failure to use an appropriately classified radiologist as required by 29 CFR 1910.1001, Appendix E, and an attempt to negate prior findings indicating the health consequences of exposure to asbestos, beryllium or other toxins. After complainant challenged the 1991 B-reader findings, the B-reader reviewed the 1991 films again and qualified the negative finding, asserting that fat deposits may have caused the pleural changes. Subsequent x-rays in 1992, 1993 and 1994 reflected the positive findings previously identified."

Response 4: There is no evidence that GSA was attempting to negate the medical findings prior to 1991, or that the different findings were due to GSA failing to comply with the Occupational Safety & Health Administration regulations contained in Title 29 of the Code of Federal Regulations. The alleged differences in medical findings may have been the result of B reader variability and/or differences in the competency of the B readers. This determination can only be made by a qualified B reader physician.

As previously discussed in the Response to Allegation 3, GSA relied on FOH to provide third-party qualified radiologists that met the requirements contained in 29 CFR 1910.1001, Appendix E. Reviews of Asbestos Medical Monitoring Exams and completed B reader forms indicate that FOH always utilized qualified B readers that met the 29 CFR 1910.1001 requirements. There is no evidence suggesting the B reader providing the 1991 x-ray determination was not qualified.

It is true that the B reader who provided the 1991 x-ray negative determination performed a second review of the 1991 films after being challenged by the complainant. When completing the second review of the 1992 x-ray (taken on 6/23/92), the B reader also examined the complainant's chest x-rays from 1985, and 1988 – 1991. These included posteroanterior (PA) films dated 4/29/85, 7/25/91, and 6/23/92 that were taken at the Western Missouri Radiological Group offices in Kansas City, MO, and also PA and lateral chest films taken at Research Medical Center, Kansas City, MO, dated 6/13/88, 6/1/89, and 5/24/90.

The next B reading form, completed on 8/4/1992 by a different B reader for the x-ray done on 6/23/92, indicated pleural abnormalities consistent with pneumoconiosis, including pleural thickening. The Radiological Consultation report issued on 8/5/92 stated, "The chest is normal except for some mild localized pleural thickening over the mid portions of both lateral chest walls. The pleural thickening is slightly greater on the right side. It has remained stable since 1985. A further evaluation of the pleural thickening is needed, the best way would be to obtain thin slice CT scans through the pleural thickening to see if it represents fibrosis or fat." This statement was revised by the B reader in a follow-up radiological consultation report issued on 9/10/92, and changed to read as follows:

**"If** further evaluation of the pleural thickening is needed, the best way would be to obtain thin slice CT scans through the pleural thickening to see if it represents fibrosis or fat." (emphasis added by the author)

The results of the B reading were reported by Richard Miller, MD, Regional Program Director, Division Federal Occupational Health Region VII, to the complainant, the DFOH Health Unit Charge Nurse, and the GSA Health and Safety Officer in a memo dated 8/19/92. The memo stated: "Pleural changes were found consistent with asbestos exposure but no evidence for asbestosis (disease) was seen. For follow-up, employee should have yearly chest xray

screening with B-reading. No work restrictions are required as long as personal protective equipment is properly used". This determination made by the medical doctor provided a path forward to further monitor the health conditions of the complainant.

Based on the sum of the documents that were reviewed during this investigation, it appears that the basis for this allegation is the 1991 B reader's negative findings. As a result of the contradictory 1991 findings, the complainant, and four other M&O employees, questioned how there could be such differing interpretations among qualified radiologists. These questions appear to have led to suspicions that GSA was trying to negate the prior x-ray findings, and that the B reader used in 1991 did not meet the 29 CFR 1910.1001 requirements. As previously discussed in the Response to Allegation 3, GSA attempted to resolve these suspicions in the 7/21/1993 memo from James J. Hoover, Director, Real Property Management and Safety Division, to David Hendricks, which explained the differences as being due to the differing subjective interpretations on marginal changes by the B readers. GSA also attempted to settle the B reader controversy by holding an open meeting on 1/8/1993 in the GSA Plaza Level Training Room. This meeting included an hour-long presentation by Dr. Thomas Beller, a B reader and pulmonologist familiar with respiratory disability issues. Even after these efforts by GSA, the controversy surrounding the medical surveillance program and B reader interpretations was never resolved to the satisfaction of the complainant and the other workers.

The FOH claim that the different B readings were due to interpretation differences between the different B readers may be valid. Both the International Labour Office and NIOSH acknowledge that there can be considerable reader variation in multiple readings of some radiographs, not only from reader to reader (inter-reader variation), but also between readings by the same reader (intra-reader variation). As recently as 2009, NIOSH held a scientific workshop, "The NIOSH B Reader Certification Program: Looking To The Future," specifically addressing the B Reader Certification Program. Among the papers in the published Proceedings (<http://www.cdc.gov/niosh/docs/2009-140/pdfs/2009-140.pdf>), the paper titled "Alternative Approaches to B Reader Quality Assurance" discusses inter- and intra-reader variation in radiographic interpretation as an ongoing issue with the B reader program, and cites numerous published references. In discussing this issue, the author states that "Reader variability occurs throughout the Classification including small and large rounded opacities, but most of the current controversy involves **pleural thickening** and the reading of small irregular opacities at low profusion levels." (emphasis added by the author) The article further discusses that extra-pleural fat deposition can mimic asbestos-related pleural plaques. As discussed above, the issue of pleural thickening versus fat deposition was raised by the 1992 B reader on 8/4/1992, noting that subpleural deposition of fat is common in obese patients. (Based on the height and weight information contained in the complainant's records, the complainant was obese by National Institutes of Health standards, with a Body Mass Index (BMI) greater than 30.) As a result, the complainant had a CT scan on 9/25/1992 to differentiate between fibrosis or fat deposition. The results of the CT scan identified subpleural fat as the source.

Allegation 5: “Since he retired in 1994, complainant [Mr. Hendricks] has not been offered testing by GSA.”

Response 5: Based on the context of the allegation, it is assumed that Mr. Hendricks is referring to medical surveillance testing. However, there is no OSHA requirement that requires ongoing medical testing of the complainant after his retirement. Depending on the specific OSHA standard, the medical surveillance requirements, for all OSHA standards that require medical surveillance, cease when the worker either terminates employment, or when occupational exposure to a specific hazard has ended. In the case of asbestos medical surveillance programs, under 29 CFR 1910.1001 for general industry, 1) no periodic (annual) exams are required for employees whose jobs no longer subject them to asbestos exposure, and 2) a medical exam is still required for all employees at termination of employment, except those who have had a medical exam in accordance with paragraphs 1910.1001(I)(2) - 1910.1001(I)(4) within the past one year period. Similarly, under OSHA's asbestos standard for the construction industry, 29 CFR 1926.1101, 1) no periodic exams are required for those no longer exposed to asbestos, and 2) no medical examination is required at termination of employment. This clarification of asbestos medical surveillance requirements is contained in an OSHA interpretation letter to Mr. Aaron Gershonowitz, from Thomas J. Shepich, Director, Directorate of Enforcement Programs, dated March 2, 1989. ([https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=19759](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=19759))

Allegation 6: “Complainant asserts that current GSA Maintenance and Operations employees are not currently being offered medical monitoring following exposure to asbestos as required by 29 CFR 1926.1101. He stated that employees have been offered only annual pulmonary function tests, rather than the comprehensive physical examinations required by Part 1926.”

Response 6: There is no basis for this allegation. GSA Heartland Region 6 no longer has any M&O employees, because all M&O activities have been contracted out. Because GSA is not the direct employer of these contractors, GSA is not responsible for meeting the OSHA medical surveillance requirements contained in 29 CFR 1926.1101 for these contractors.

Based on the context of the allegation, it is assumed that the complainant is referring to previous M&O employees that have been reclassified, but are currently employed by GSA in other activities where they no longer perform any of their previous M&O activities, including asbestos work that would fall under 29 CFR 1926.1101. Consequently, the medical surveillance requirements in CFR 1926.1101 no longer apply to these workers.

As a good faith gesture, for the former M&O employees still employed, but no longer doing M&O work, GSA has continued to provide medical exams meant to track any potential lung changes related to the latency of asbestos disease. While these exams initially included both a chest roentgenogram and pulmonary function test (PFT), the chest roentgenogram was discontinued at the recommendation of Federal Occupational Health. Federal Occupational Health stated that lung changes will be detected earlier with a changing PFT, rather than with a chest roentgenogram.

Allegation 7: “Complainant and approximately 40 other Maintenance and Operations employees worked at the Plant while employed by GSA. These employees worked extensively in the fan rooms, both in the Plant and on the GSA-controlled portion of the site, physically changing large roll filters that captured contaminants. Complainant explains that he worked in fan rooms that were common to both the GSA-controlled portion of the Complex and the Plant. All of the fan rooms at GSA drew outside air into the building from nearby ventilation stacks from the Plant. In addition, Complainant reports that water from the DOE-controlled portion of the site traveled to the GSA-controlled portion, and he and other Maintenance and Operations employees were responsible for pipe repairs occasioned by the breaks or leaks on the DOE-controlled portion of the site.”

Response 7: Although the duties described in the allegation appear to be true, there is no evidence of a significant exposure to M&O employees from the materials used in the Plant. The NIOSH HHE specifically investigated both the current and the past shared ventilation systems, as well as the re-entrainment of exhausted air from Plant ventilation systems into the outdoor intakes of the GSA ventilation system. The summary results of the HHE, reported in the interim letter dated April 13, 2011, stated the following: “Based upon the information we have obtained to this point, we believe that Bannister Federal Complex employees have no significant exposure from substances in use now or in the past at KCP. Our careful and thorough review of documents, monitoring and exposure records, our assessment of work areas, and our interviews with multiple employees, managers, and supervisors all found minimal potential for exposure.” This investigation concurs with this finding.

The BFC injury/illness database contains a single event related to a potable water leak from the Plant side of the building into the GSA side of the building that resulted in two workers seeking medical treatment. On 5/15/1995, a potable water line broke on the Plant side of the building and leaked into the sub-basement of Building 1. The potable water was a closed system, and supplied by the City of Kansas City. The leaking water entered GSA space and went through an old wood-block floor above the sub-basement, where it was contaminated with creosote, and, possibly, with the polychlorinated biphenyls (PCBs) contained in the wood blocks. Ten M&O employees responded to the leak, where they encountered falling water. These employees were not wearing any PPE; three of the ten workers complained of burning and itching skin. Two of these three workers then sought medical treatment. There were no lost workdays associated with the incident, and no evidence of long-term medical problems from the exposures. The records of this event do not refer to any other contaminants other than creosote and possible PCBs in the leaking potable water.

There are no other instances in the injury/illness database of injuries or illnesses that are associated with potential contaminants from the Plant side of the building. Based on interviews with coworkers of the complainant, there appear to be anecdotal reports of exposures and injuries, but there are no documented reports of these events. Further investigation into these events would be needed to determine their validity and the potential for employee exposure to contaminants from the Plant side of the building.

Allegation 8: “Complainant stated that he and other Maintenance and Operations employees regularly performed maintenance and repairs on the sewage ejection system. The sewage systems for the GSA-controlled portion of the site and the Plant were shared, at least at the level of the pits to which all sewage flowed before being pumped up and out of the facility. Thus, contaminants disposed of at the Plant, including, for example, the chemical residue from barrel-washing operations, were washed into common pits, which were then pumped to the street level. When a sewage back-up occurred, potentially contaminated sewage was released into the GSA controlled side.”

Response 8: There is insufficient information to determine (a) the frequency that M&O employees performed maintenance and repairs on the sewage ejection system, (b) if any contaminants were or were not washed into the pits from barrel washing, or any other Plant operations, and (c) whether or not M&O employees were exposed to Plant contaminants while performing maintenance and repairs on the sewage ejection system. It is doubtful that the information that would be needed to resolve this allegation exists. It appears to be speculative that M&O employees were potentially exposed, as, primarily, only anecdotal verbal reports from Mr. Daniels and similarly concerned coworkers of Mr. Hendricks have been offered as information.

A site visit to BFC confirmed that the sewage ejection systems are shared by the Plant and the GSA portion of the building. Consequently, if any contaminants were disposed of in the Plant sewage system, they would flow into the common sewage pits on the GSA side of the building; any sewage back-ups might involve contaminated sewage.

As reported in the third-party 1995 Occupational Safety and Health Survey of the Bannister Federal Center (OCCUPATIONAL SAFETY AND HEALTH SURVEY OF THE BANNISTER FEDERAL CENTER 1500 EAST BANNISTER ROAD KANSAS CITY, MO RESPONSIBLE FIELD OFFICE KANSAS CITY SOUTH – BANNISTER, Prepared By: Events Analysis, Inc., Task Order No. P-06-95-GX-0041, AUGUST 3, 1995), it was noted that maintenance and/or repair operations involving the sewage ejector pits in Buildings 1 and 2, which are connected to the Plant building, were designated as “entry permit required” confined spaces, due to the possibility of atmospheric hazards, i.e., sewer gas. Plumbers and other personnel entering these spaces were required to contact the local fire and rescue service for support. Procedures called for the local fire and rescue service to perform atmospheric testing and to provide fresh air ventilation to workers inside the pits. As a precaution against potential infectious disease exposures from sewage contained in the pipes and pits, workers were given OSHA Bloodborne Pathogen training, offered immunizations, and provided with protective gloves.

Allegation 9: “Complainant reports that the agency has not taken sufficient action to protect employees from the hazards known to exist at the Complex. Such actions include notifying employees of the potential for exposure, and providing a medical surveillance program for all employees who were exposed at or above a permissible exposure limit.”

Response 9: This allegation implies, without supporting evidence, that employees were exposed at or above a Permissible Exposure Limit (PEL), and attempts to place the GSA in the difficult position of trying to prove that no exposures above a PEL have occurred. There is no documented evidence to either prove or disprove that any employees were ever exposed above a PEL during their career.

Although documentation does not exist for the entire career of the complainant, the agency appears to have taken sufficient actions to identify likely potential occupational exposures for GSA workers, and to have taken the necessary steps to mitigate the potential hazards. These actions have included hazard assessments, medical surveillance programs (where appropriate), training, and the issuance of personal protective equipment (PPE) where deemed necessary.

The medical surveillance program for M&O employees was established for all mechanical and/or maintenance workers potentially exposed to asbestos during repair and/or maintenance operations, as well as to noise in the fan houses. Baseline surveys to determine pre-existing medical conditions were conducted, followed by annual exams. In addition to the chest x-ray and pulmonary function tests required by 29 CFR 1910.1001 or CFR 29 CFR 1926.1101, and the audiometric testing required by 29 CFR 1910.95, additional medical tests were conducted as part of a comprehensive exam. These additional tests included: blood analysis (complete blood count, comprehensive metabolic panel, lipid panel, and polychlorinated biphenyls), urinalysis, vision testing, and an electrocardiogram (EKG). As reported in the independent 1995 Occupational Safety and Health Survey, exit medical exams were given upon termination of employment or retirement for certain categories of employees based on their past occupational exposures. Medical reports were sent to the employee, or to their personal physician, and to the Regional GSA Personnel Office. If any potential job-related medical conditions were discovered, a notification was sent to the S&EM Branch for follow-up or corrective action. The comprehensive medical exams administered by GSA went beyond the OSHA medical surveillance program requirements for asbestos and noise hazards.

Allegation 10: “In contrast to the comprehensive medical surveillance program in place for DOE employees and former employees who worked at the Plant, GSA has not established a comprehensive medical monitoring program for its own employees. Nor are GSA employees who worked at the Plant recognized as a Special Cohort eligible for compensation for illness caused by their employment under the Energy Employees Occupational Illness Compensation program, despite their exposure to the same contaminants that affected Plant employees. Many of the Maintenance and Operations employees who worked at the Plant have since died.”

Response 10: There is no evidence that the complainant and other GSA employees were exposed to the same hazards as Plant workers and that GSA employees should be included in a special cohort group under the Energy Employees Occupational Illness Compensation Program (EEOICP). There is also no evidence that GSA should establish a comprehensive medical surveillance program identical to the DOE, or that M&O workers at BFC are experiencing abnormal mortality/morbidity due to an occupational exposure to unidentified hazardous materials.

Recognizing the need to provide compensation to four specific groups of workers, Congress has enacted legislation that established four major workers’ compensation programs that are administered by separate divisions within the U.S. Department of Labor, Office of Workers’ Compensation Programs (OWCP). The four divisions within the OWCP are: Division of Federal Employees’ Compensation (DFEC), Division of Energy Employees’ Occupational Illness Compensation (DEEOIC), Division of Longshore and Harbor Workers’ Compensation (DLHWC), and Division of Coal Mine Workers’ Compensation (DCMWC). These four programs provide wage replacement benefits, medical treatment, vocational rehabilitation, and other benefits to certain workers who experience work-related injury or occupational disease, or to their dependents. While the goals of these four programs are the same, by design the programs are not necessarily identical in how they meet these goals, and there are no current statutory or regulatory requirements that the GSA establish a medical surveillance program identical to the DOE.

The GSA employees at the Bannister Federal Complex do not meet the eligibility criteria for inclusion in the DOE EEOICP that is administered by the U.S. Department of Labor (<http://www.dol.gov/compliance/laws/comp-energy.htm>). The program delivers benefits to eligible employees and former employees of the U.S. Department of Energy (DOE), or one of its predecessor corporations, including its contractors and subcontractors. GSA employees at the Bannister Federal Complex were not employees of the Department of Energy, its contractors and subcontractors, nor did they belong to one of the statutory Special Exposure Cohorts. (<http://www.dol.gov/owcp/energy/regs/compliance/law/SEC-Employees.htm>) As with other federal workers, the complainant is provided with workers’ compensation coverage for employment-related injuries and occupational diseases under the Federal Employees’ Compensation Act (<http://www.dol.gov/owcp/dfec/regs/statutes/feca.htm>), which is administered by the Division of Federal Employees’ Compensation (DFEC).

In establishing the Energy Employees Occupational Illness Compensation Program, Congress recognized that Federal nuclear activities are “ultra-hazardous”, and that nuclear weapons production and testing have involved unique dangers. A number of scientific studies have documented that Cold War workers supporting the development of atomic weapons were adversely affected as a result of exposure to beryllium, ionizing radiation, and other hazards unique to nuclear weapons production and testing. The original Act, published in 2000, refers to “more than two dozen scientific findings”. (<http://www.dol.gov/owcp/energy/regs/compliance/law/EEOICPAALL.htm>) In contrast to the ultra-hazardous work activities covered by the Act, there are currently no studies or data

indicating that the occupational hazards and exposures of GSA employees are the same as those encountered by DOE employees, contractors, and subcontractors involved in nuclear weapons production and testing.

Although Mr. Hendricks and other GSA employees at the Bannister Federal Complex do not meet the eligibility criteria for inclusion in the DOE EEOICP, Mr. Hendricks filed a claim for benefits under Part B for chronic beryllium disease (CBD) and under Part E for CBD, hypertension, hearing loss and chronic obstructive pulmonary disease (COPD)/emphysema.

The claim was submitted on January 30, 2012, to the U.S. Department of Labor, Office of Workers Compensation Programs, Division of Energy Employees Occupational Illness Compensation, Denver District Office. After reviewing the submitted documentation, the Denver District Office issued a Notice of Recommended Decision on August 23, 2012, recommending denial of the claim stating that "...the evidence does not support a finding of qualifying employment as a 'contract employee' and entitlement to benefits under EEOICPA is not warranted."

The final denial of these claims by the Department of Labor occurred on June 13, 2013. Mr. Hendricks then requested a reconsideration of the June 13, 2013 denial. The request for reconsideration was denied on August 14, 2013, and the earlier denial of benefits became final.

The complainant also alleges that GSA employees who "worked at the Plant" were exposed to the same contaminants that affected Plant employees. Neither the NIOSH HHE nor this investigation found evidence to support this claim. As previously discussed in the Introduction, due to worker retirements and other factors it was not possible to determine the extent of M&O employee involvement in maintenance or repair activities on the Plant side of the building. An examination of the 615 entries for BFC GSA employees in the Heartland Region 6 injury/illness database, which included 65 entries for maintenance and custodial workers, showed the 5/15/1995 potable water line break as being the only incident associated with the Plant side of the building.

The complainant states that "Many of the Maintenance and Operations employees who worked at the Plant have since died." In support of this statement, the complainant has provided a list of GSA maintenance employees to the Office of Special Counsel. This list is included in Enclosure A of the letter from Carolyn N. Lerner, OSC to Daniel M. Tanghelini, dated February 28, 2013 (Re: OSC File No. DI-12-3233). The list contains the names of 41 M&O employees, of whom 16 were deceased at the time of the document. It also contains notations indicating the potential employee exposure as "during the 1980's" or "prior to the 1980's", without defining what the exposure was.

As it stands by itself, the list is anecdotal and does not demonstrate whether or not the M&O employees have a higher-than-expected mortality rate attributable to their employment. In the case of the deceased members, there is no information regarding the following: age at death, cause of death, preexisting non-occupational medical conditions, smoking history, and other factors that need to be examined to determine if the deaths of these employees was related to their employment. Until this list is analyzed by a competent epidemiologist with respect to these factors - an analysis outside the scope of this investigation - the list, in itself, does not support the implication that these deaths are due to the employee's occupational exposures. (For example, one of the deceased persons on the list was reported to be the victim of a tragic electrical accident, rather than the result of an unidentified exposure.) Given that the employee exposures are said to have occurred prior to, and during, the 1980s, the probable age distribution of the group is such that the number of observed deaths might be due to normally expected mortality rates.

Allegation 11: “None of the investigations, audits, or evaluations performed by GSA, DOE, and NIOSH examined the potential exposures of GSA employees who performed work at the Plant. The GSA OIG investigation found that ... ‘prior to 2010, [GSA] did not have a strong environmental management program for the Complex,’ and ‘without a comprehensive historical perspective, there is insufficient evidence to conclude that occupants at the Complex were not exposed to hazardous toxins.’ The GSA OIG review concentrated on the time period 1999 through 2010. No historical review or investigation of employee health hazards has been completed for the time period prior to 1999. Complainant asserts that such a review is necessary to establish the exposures GSA employees may have experienced as a result of the cross-contamination from the Plant, as well as from working on Plant equipment on DOE-controlled property.”

Response 11: This allegation is not true. As part of the GSA Office of Inspector General (OIG) 2010 review of health and safety conditions at the Bannister Federal Complex, a historical review was conducted of workman’s compensation claims to gain a historical perspective on employee occupational illnesses at BFC. (REVIEW OF HEALTH AND SAFETY CONDITIONS AT THE BANNISTER FEDERAL COMPLEX KANSAS CITY, MISSOURI, Report Number A100116/P/6/R11001, November 8, 2010) The GSA OIG reviewed worker’s compensation claim information for federal employees at BFC from 1988 through April 9, 2010. During that time period, 4,081 worker compensation claims were filed, of which 75 accepted claims could possibly be attributed to environmental or chemical exposure. None of the 75 claims was found to be related to long-term exposure to toxic substances. The OIG report concludes, “Further, historical ad hoc testing and our review of worker’s compensation claims filed by occupants of the Complex do not indicate any sustained exposure to toxic substances by GSA occupants. However, it is important to note that not all of the tests results have been finalized and the health hazard evaluation being conducted by NIOSH has not been completed.” (This is in reference to the NIOSH HHE discussed in Allegations 1 and 2, and the Reply to Allegation 7.)

Subsequent to the above November 2010 GSA OIG Review, NIOSH released the HHE interim letter on April 13, 2011, summarizing the status of the HHE to date. As discussed in the interim letter, the HHE included a review of records dated from the 1980s to March 1, 2010, concerning exposures to metals, volatile organic compounds (VOCs), polychlorinated biphenyls (PCBs), radiation, and drinking water. These monitoring records included chemical and physical hazards, air and surface wipe samples collected across the complex, indoor environmental quality (IEQ) assessments, environmental soil and groundwater monitoring, and environmental site assessments. In addition to a review of monitoring and exposure records, the NIOSH HHE also included an assessment of work areas, and interviews with multiple employees, managers, and supervisors.

To date, the final NIOSH report has not been released, but discussions with one of the authors of the interim letter, Dr. Elena Page, MD, MPH, indicated that there will be no substantive changes in the final report from the conclusions documented in the interim letter. In our professional judgment, the NIOSH HHE, which was initiated at the request of GSA, meets the complainant’s request for a historical review of potential employee health hazards that GSA employees and other tenant agency employees may have experienced as the result of substances used in the Plant.

