GAO

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General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-281868

January 29, 1999

The Honorable F. James Sensenbrenner, Jr.
Chairman, Committee on Science
House of Representatives

Subject: Environmental Protection: Allegations by EPA Employees

Dear Mr. Chairman:

The mission of the Environmental Protection Agency (EPA) is to protect human health and to safeguard the natural environment. EPA's purpose is to ensure that all Americans are protected from significant environmental health risks and that national efforts to reduce environmental risks are based on the best available scientific information. On June 10, 1998, The Washington Times published a letter from 20 individuals,[1] including EPA employees and others having business with the agency, alleging mismanagement by EPA and retaliation against whistleblowers. The individuals alleged fraud and waste in EPA and claimed that EPA regulations and enforcement actions are based on poor science and consequently harm, rather than protect, public health and the environment. Moreover, the individuals claimed that EPA retaliates against whistleblowers and rewards individuals who carry out the retaliations. Most of the individuals making the allegations were employees in either EPA's Office of Research and Development or in EPA's regional offices. Some of the individuals had sought relief from retaliation under whistleblower protection statutes.

You requested that we (1) provide specific information on the allegations made by the 20 individuals and EPA's response to the allegations and (2) determine

[1]The Washington Times published the letter with 13 signatures. The original letter the newspaper received had 19 signatures. Six of the signatures were not published because the newspaper did not get permission from those individuals to print their names. The actual author of the letter was not among its signers but was considered for the purposes of this report to be the 20th individual involved.

whether these and other individuals sought relief under whistleblower statutory provisions and, if so, the resolution or status of the cases and whether the 20 individuals are still employed by or have business with the agency.

RESULTS IN BRIEF

Of the 20 individuals who sent the letter making the allegations to the newspaper, 10 provided us with 16 specific allegations. The other 10 individuals told us that they either signed the letter to support fellow employees (8 individuals) or to protest fraud and waste in an EPA regional office (2 individuals). Generally, the allegations involved the inappropriate use of scientific evidence, the mismanagement of contracts, and other issues discussed below.

- Nine of the allegations questioned EPA's use of science to support risk assessments and regulations. Two of these allegations involved matters considered by EPA in the last 2 years; the others involved matters that were considered 6 to 12 years ago. In some cases, EPA's actions were alleged to have not been sufficiently protective; in others, EPA was accused of taking actions not supported by the science. As of December 1998, EPA stated that it disagreed with the basis for eight allegations and indicated that it did not have sufficient information or details to formulate a response to the remaining allegation.

- Four allegations made by the individuals concerned specific contract irregularities or contract activities. EPA's Office of Inspector General confirmed that the contract irregularities cited in one allegation had occurred. For another allegation, EPA's Office of Inspector General reviewed the contract and did not take further action on the allegation. In response to the other two contract allegations, EPA said that one was unfounded and that it was unaware of the specifics of the other allegation and could not comment on it. EPA's Office of Inspector General was not involved in these two allegations.

- The three remaining allegations involved issues such as the approval of grants without adequate documentation. In response to these allegations, EPA indicated that corrective action had been taken for one, that it disagreed with the basis for another, and that it was unaware of the specifics of the remaining allegation and therefore could not comment on it.

The specific allegations and EPA's responses are listed in detail in enclosure I to this letter.

Of the 20 people who sent the letter to the newspaper, 8 had filed 12 complaints against EPA alleging that the agency had retaliated for whistleblower activities. These complaints were not always linked to the allegations about scientific evidence or contract mismanagement. Five of those who sent the letter are no longer employed by or associated with the agency; four of the five had filed complaints about retaliation. Another individual remains on EPA's payroll but is on a detail to a university position. From January 1992 through December 1998, approximately the same period during which these 12 complaints were filed, an additional 24 complaints were filed by 20 other EPA employees seeking whistleblower protection. Overall, for the 36 complaints, 6 were resolved in favor of the individuals,[2] and 14 were dismissed at the request of both parties. Seven cases were resolved in favor of EPA. Nine cases are still in litigation.

BACKGROUND

The 20 individuals who sent the letter to The Washington Times alleged that EPA employees have been harassed and fired for criticizing EPA's enforcement of the Comprehensive Environmental Response, Compensation, and Liability Act; the Clean Air Act; the Safe Drinking Water Act; and other environmental statutes. The individuals alleged that retaliation against whistleblowers occurs at every management level and is supported throughout EPA. Additionally, the letter stated that even if whistleblowers' claims are substantiated, whistleblowers are fired or their careers are "dead-ended" and that the agency employees carrying out the retaliation are rewarded.

Employees who believe they have been retaliated against by an employer, including EPA, for whistleblower activities related to the Clean Air Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Federal Water Pollution Control Act; the Safe Drinking Water Act; the Solid Waste Disposal Act; and the Toxic Substances Control Act may file a complaint with the Secretary of Labor under employee protection provisions contained in these laws. Complaints filed under these environmental laws are reviewed by an Occupational Safety and Health Administration investigator.[3] If the investigator determines that retaliation has occurred, the Occupational Safety and Health Administration may order corrective actions. If the Occupational

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[2]The cases shown as resolved in favor of the individuals include three mutually agreed upon settlements between the employees and EPA in which the employees received some form of compensation.

[3]The Occupational Safety and Health Administration is an agency within the Department of Labor. Prior to February 3, 1997, these matters were investigated by the Department of Labor's Wage and Hour Division.

Safety and Health Administration's findings and remedy are not appealed, the order becomes a final order of the Secretary of Labor. However, either party may request a hearing before a Department of Labor administrative law judge. If a hearing is requested, any findings made by the Occupational Safety and Health Administration are rendered legally moot, and a new review of the complaint is begun. Recommended decisions and orders issued by the administrative law judges may be appealed to the Department of Labor Administrative Review Board and after that to the United States court of appeals for the circuit in which the alleged discrimination occurred.

Federal employees, including EPA employees, may also seek whistleblower protection from the Office of Special Counsel and the Merit Systems Protection Board under the Whistleblower Protection Act of 1989. The Office of Special Counsel is an independent executive agency whose responsibilities include investigating whistleblower complaints brought by federal employees and litigating cases arising out of these complaints before the Merit Systems Protection Board. The Office of Special Counsel reviews whistleblower complaints to determine whether there is reason to believe prohibited personnel practices have occurred. It may seek early resolution of a complaint with an agency or write to an agency recommending corrective action. If an agency declines to take action, the Office of Special Counsel or the employee may take the case to the Merit Systems Protection Board for resolution. If the action involves a matter appealable to the Merit Systems Protection Board, the employee has the option of filing with the Office of Special Counsel or directly with the Board. The Merit Systems Protection Board is an independent agency in the executive branch that is responsible for hearing and adjudicating appeals by federal employees and cases brought by the Office of Special Counsel alleging prohibited personnel practices, including charges in connection with whistleblowing. The Board has the authority to enforce its decisions and to order corrective and disciplinary actions. Final decisions of the Board can be appealed to the United States Court of Appeals for the Federal Circuit.

SPECIFIC ALLEGATIONS BY INDIVIDUALS AND EPA'S RESPONSES

The letter in The Washington Times was general in nature regarding EPA's alleged mismanagement and retaliation against whistleblowers. When we contacted the 20 individuals who sent the letter, 10 provided information on 16 specific allegations. Nine of those specific allegations involved the inappropriate use of scientific evidence, four involved contract mismanagement, and three involved miscellaneous issues. Of the 10 employees who did not provide specific allegations, 8 stated that they signed the letter to support fellow employees, and 2 stated that they were protesting fraud and waste in the EPA Region VIII Office in Denver. Enclosure I details the 16 specific allegations

made by the individuals and any alleged retaliation by EPA, with the disposition of the retaliation complaints as well as EPA's responses to and comments on the allegations and complaints.

Of the nine allegations involving the inappropriate use of scientific evidence, eight were focused on or related to criticism of EPA's rule-making process. The eight allegations involved five rules that had been promulgated over the period from 1987 through 1997. The topics of these rules and their effective dates were particulate matter, 1997; land disposal of sewage sludge, 1993; wood preserving, 1990; the pesticide Alar, 1990; and wastewater discharge, 1987. One of the eight allegations also involved a risk assessment for secondhand smoke that EPA prepared in 1992.

The science-related allegations involved a lack of scientific support for regulatory decisions, the use of poor-quality scientific evidence to support decisions, or the manipulation of scientific support. In some cases, as with the wood preserving rule, the allegation was that the rule did not go far enough to protect the environment, and in other cases, as with the sludge rule, the allegation was that the rule was not supported by the scientific evidence. EPA generally disagreed with the basis of these allegations or indicated that it was unaware of an allegation. For example, two individuals alleged that the sludge rule was not based on good science and that EPA managers overruled and did not consider the concerns of the agency's scientists. EPA's response was that this allegation was not factual and that the agency encouraged its scientists to publicly comment on the rule. The scientists' comments, along with those of others, were considered and used in the development of the final rule, according to EPA.

An example of an allegation regarding the poor quality of scientific evidence is one individual's claim that the Alar pesticide rule was not based on the best science. EPA's response to the allegation was that EPA's Office of Research and Development reviewed and commented on the risk assessment for the rule and that the rule was peer-reviewed by scientists outside EPA as well as by EPA's Science Advisory Board. Regarding the manipulation of scientific evidence, an individual alleged that EPA's risk analysis of secondhand smoke, which was based on an extrapolation of data derived from animal tests to humans, was "bogus." EPA stated that in the risk assessment, no direct animal data extrapolation was used, but that animal test data did support the findings based on human data.

The final scientific allegation did not involve EPA's rule-making process, but rather the risk assessment and cleanup method for a specific Superfund site. An EPA employee alleged that the agency did not perform the required risk assessment before beginning the site's cleanup and that the agency disregarded

scientific findings that raised concerns about copper leaching from the Superfund site into the groundwater and soil. EPA stated that it took cleanup action at the site based on very little documentation of risk, an allowable procedure for interim response actions, according to the agency. In connection with copper leaching, EPA stated that another source of copper contamination is suspected but has not been found.

In the category of contract mismanagement, the four allegations involved specific contracts or contract activities. In response to one allegation, involving two contracts, EPA's Office of Inspector General conducted audits and concluded that irregularities, such as a violation of the Antideficiency Act when EPA ordered a building lease to run longer than the available appropriation, had occurred in both contracts. Another allegation was that procedures had not been followed when a contract was modified to increase the contract amount for additional work. EPA stated that it had followed the appropriate procedures in modifying the contract. The remaining two allegations involved free contractor services provided to EPA and contractor personnel directing EPA employees to change contract terms to be favorable to the contractor. EPA stated that the Office of Inspector General investigated the allegation about free contractor services and concluded that further action on the allegation was not warranted. EPA said it was not aware of any allegations being forwarded by employees to the Office of Inspector General involving the modification of contract terms to be favorable to the contractors.

The three miscellaneous allegations involved the approval of improper or illegal EPA funds in a grant to a state for pesticide inspections; efforts to terminate the employment of an individual employed under an EPA grant because of his association with an EPA employee; and problems with documentation, controls, and duplication in EPA's financial systems. EPA's responses to these allegations were, respectively, that regarding the state grant, it could not respond without specifics about the grant; regarding the efforts to terminate the employment of an individual, EPA stated that no one sought to terminate his employment; and regarding the financial systems, EPA stated that the Office of Inspector General is reviewing the adequacy of the financial systems and, as problems are identified, that they will be resolved as systems are improved.

WHISTLEBLOWER CASES FILED BY INDIVIDUALS

Of the 20 individuals who sent the letter to The Washington Times, 8 had filed a total of 12 whistleblower complaints with the Department of Labor, the Office of Special Counsel, or the Merit Systems Protection Board. EPA denied that any retaliatory actions were taken with respect to these employees. As of December 31, 1998, three complaints had been resolved in favor of the

individuals, and four had been dismissed at the request of both parties. One complaint had been resolved in favor of EPA, and the remaining four complaints were still in litigation. The complaints alleged retaliation by EPA for actions taken by the employees. For example, one employee alleged that his performance rating was lowered because of his disclosures of contract irregularities to EPA's Office of General Counsel and the Office of Inspector General. The settlement of the complaints occurred over time, with some being settled as recently as 1998 and others dating to 1994. A summary of the number of employees' whistleblower complaints and the dispositions of those complaints as of December 31, 1998, is in enclosure II.

The employees' allegations about retaliation did not always flow from their allegations about the inappropriate use of scientific evidence, the mismanagement of contracts, or other issues. Therefore, we cannot conclude that the allegations they made about these issues prompted the alleged retaliation for whistleblower activities. For example, one employee stated that he was the subject of retaliation for publicly criticizing EPA in a magazine article. The Department of Labor's investigator determined that the employee had been discriminated against, and EPA requested a hearing on that determination. The employee and EPA subsequently agreed to a monetary settlement. However, the employee's specific allegation about the inappropriate use of scientific evidence involved the rule governing the land disposal of sludge. The magazine article for which the employee alleged retaliation was not related to this rule, and, therefore, the alleged retaliation was not directly linked to the allegation about the inappropriate use of scientific evidence.

Another uncertainty about the complaints alleging retaliation and the dispositions of those complaints is the impact that they had on the employees' future employment with EPA. Of the eight individuals filing whistleblower complaints, three have left EPA since the publication of the letter in The Washington Times in June 1998. One of these individuals left EPA after the grant he was working on expired; the others were full-time employees. Two individuals who sent the letter, but who did not file whistleblower complaints, also left the agency. One of these individuals was a full-time employee; the other was a contractor employee. Another employee has remained on EPA's payroll, but as part of his settlement with EPA, he began a 2-year Intergovernmental Personnel Act assignment at the University of Georgia on December 13, 1998.

In addition to the 8 employees who filed whistleblower complaints and sent the letter to The Washington Times, another 20 EPA employees filed 24 whistleblower cases during the period from January 1992 through December 1998. Three of these cases were resolved with terms favorable to the individuals, and 10 were dismissed at the request of both parties. For six cases,

the decisions were resolved in favor of EPA. The remaining five complaints were still in litigation as of December 31, 1998.

AGENCY COMMENTS

We provided a draft of this report to the Environmental Protection Agency, the Occupational Safety and Health Administration, the Merit Systems Protection Board, and the Office of Special Counsel for review and comment. EPA provided comments and clarifying language. We added clarifying language in the appropriate areas of the report. For three of EPA's comments we did not make changes. In the first comment, EPA stated that there were 34 whistleblower complaints, not 36 as we cite in the report. We reverified the number of complaints and concluded that the correct number was 36. A second comment involved our characterization of complaints that resulted in mutually agreed settlements between EPA and the complainants as having been settled in favor of the employees. EPA stated that in these cases, there was no prevailing party and the cases should be characterized as having been dismissed at the request of both parties. We believe that the settlements reached were favorable to the individuals and that the cases should be so characterized. The third comment for which we did not change report language was in regard to an employee referred to in table I.1 as employee 1. EPA stated that it had applied its ethics standards to the employee's outside writing, which was both critical and not critical of the agency. With regard to the articles that were not critical, EPA determined that proper procedures had been followed. EPA requested that we revise the "alleged retaliation" column of the table accordingly. However, this column reports the employee's retaliation allegation, not EPA's position. With regard to EPA's position on the alleged retaliation, the "disposition" column presents the conclusions of the independent Department of Labor investigation, which determined that EPA discriminated against the employee.

Also, EPA requested that in the tables in enclosure I, under "EPA's comments on allegation" for employees 1, 2, 3, 4, 7, 10, 11, and 12, we add that the agency denies that any retaliatory action was taken with regard to the employees. We did not make these changes because that column is intended to present EPA's comments on the allegations of inappropriate use of scientific evidence, mismanagement of contracts, and other issues--not its response to the retaliation allegations. Instead, we added a sentence to the text of the report to reflect EPA's position on alleged retaliatory actions.

The Occupational Safety and Health Administration, Merit Systems Protection Board, and Office of Special Counsel provided comments on the draft report that were technical in nature and were incorporated as suggested. For example, the Occupational Safety and Health Administration suggested clarifying language in footnote 3 indicating when it had succeeded the Wage and Hour Division as

the investigator of whistleblower complaints. Similarly, the Merit Systems Protection Board suggested clarifying language on the appeals process for whistleblower complaints. Both the Merit Systems Protection Board and the Office of Special Counsel suggested language to clarify the disposition of two whistleblower complaints. The report was modified to reflect these suggestions.

SCOPE AND METHODOLOGY

To obtain information on the allegations made by the individuals, we interviewed the individuals who made the allegations and reviewed the supporting documentation that they provided. We obtained and reviewed EPA's written responses to the allegations about scientific, contract, and other matters. To determine whether the employees sought relief under the whistleblower protection statutes, we reviewed information provided by the employees and by EPA's Office of General Counsel on EPA whistleblower cases that were filed with the Department of Labor, the Office of Special Counsel, or the Merit Systems Protection Board from January 1, 1992, through December 31, 1998. We did not evaluate the merits of the scientific, contract, and other allegations; the alleged retaliation; or the disposition of the retaliation cases.

We conducted our review from November 1998 through January 1999 in accordance with generally accepted government auditing standards.

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As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies of this report to the appropriate congressional committees; interested Members of Congress; the Administrator of EPA; and other interested parties. We will also make copies available on request.

Please call me at (202) 512-6111 if you or your staff have any questions. Major contributors to this report were Doreen S. Feldman, Hamilton C. Greene, Robert E. Lippencott, Everett O. Pace, Rosemary Torres-Lerma, and John A. Wanska.

Sincerely yours,

Peter F. Guerrero
Director, Environmental
Protection Issues

Enclosures - 2

ALLEGATIONS MADE BY INDIVIDUALS

This appendix lists the specific allegations made by the individuals who sent the letter critical of EPA that appeared in The Washington Times on June 10, 1998. Twenty individuals sent the letter, including 16 EPA employees, 2 EPA grantee employees, and 2 EPA contractor employees. Ten of these individuals made 16 specific allegations, which are summarized here. Of the 10 individuals who did not provide specific allegations, 8 stated they signed the letter to provide support for their fellow employees, and 2 stated that they were protesting fraud and waste in the EPA Region VIII Office in Denver.

In tables I.1 through I.4, employees are referred to by number. Some employees made more than one allegation, so their numbers may appear two or three times in the tables. Of the 10 individuals who made specific allegations, all were EPA employees except for employee number 7, a grantee employee.

The allegations are organized into three categories:

- the inappropriate use of scientific evidence, 9 allegations (see table I.1);
- the mismanagement of contracts, 4 allegations (see table I.2); and
- miscellaneous, 3 allegations (see table I.3).

Within each category, the individuals who had alleged whistleblower retaliation by EPA are listed first, followed by those employees who did not allege retaliation. In total, 8 employees made whistleblower retaliation allegations against EPA in 12 complaints:

- Ten complaints were filed with the Department of Labor requesting relief under the employee protection (whistleblower) provisions in six environmental statutes (the Clean Air Act, 42 U.S.C. 7622; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9610; the Federal Water Pollution Control Act, 33 U.S.C. 1367; the Safe Drinking Water Act, 42 U.S.C. 300j-9(i); the Solid Waste Disposal Act, 42 U.S.C. 7622; and the Toxic Substances Control Act, 15 U.S.C. 2622).

- One complaint was filed with the Office of Special Counsel pursuant to the Whistleblower Protection Act of 1989. The employee appealed the initial decision dismissing the case, and the matter is pending before the Merit Systems Protection Board.

- One complaint was filed with the Merit Systems Protection Board pursuant to the Whistleblower Protection Act of 1989. The Merit Systems Protection Board did not order corrective action when the case came before it. The United States Court of Appeals for the Federal Circuit affirmed the Merit Systems Protection Board order denying corrective action.

Of the 12 cases, 3 were resolved in favor of the employees, 4 were dismissed at the request of both parties, 1 was resolved in favor of EPA, and 4 are still in litigation.

Table I.4 summarizes information about two employees who did not have specific scientific or contract allegations, but did have complaints investigated by the Department of Labor, the Office of Special Counsel, or the Merit Systems Protection Board.

Table I.1: Specific Allegations: Inappropriate Use of Scientific Evidence

Allegation	EPA's comments on allegation	Action taken by employee	Alleged retaliation	Disposition
(1) Employee 1, of EPA's Office of Research and Development, stated that most scientists at EPA do not believe the rule (issued in 1993) governing the land application and disposal of sewage sludge was based on good science. The employee stated that EPA administrators and senior managers completely overruled the agency's scientists and did not consider their scientific concerns on the land application and disposal of sewage sludge.	EPA's Office of Research and Development stated that the allegation has no basis in fact. According to EPA, scientists were encouraged to publicly comment on the proposed rule. Their comments along with those from the general public and a workgroup of international experts were used in the development of the final rule. EPA also commented that the rule received positive reviews by the National Academy of Sciences/National Research Council. EPA officials stated that the articles for which the employee alleges retaliation did not deal with the sludge rule, which is the focus of the employee's allegation.	The employee wrote an article in Nature on June 27, 1996, and was a guest editor for the Athens, Ga., Banner Herald on October 1, 1996. In both articles he was critical of EPA and alleged that EPA was bypassing sound science because of political pressure. On October 29, 1996, the employee filed a complaint with the Department of Labor alleging retaliation.	EPA applied its ethics standards to the employee's outside writing critical of EPA, but not to articles not critical of EPA. EPA publicly accused the employee of violating its ethics standards by communicating its accusations in a letter to a Congressman.	A Department of Labor investigator determined on January 10, 1997, that the employee was discriminated against by EPA. The investigator determined that EPA's accusation that the employee had violated the agency's ethics standards was directly linked to the employee's public criticisms of EPA. EPA requested an appeal before the Office of Administrative Law Judges. On March 20, 1998, the Department of Labor dismissed the complaint pursuant to an agreement entered into by the parties. As part of the settlement, EPA agreed to pay $115,000 to the employee, which included the payment of attorneys' fees.

Allegation	EPA's comments on allegation	Action taken by employee	Alleged retaliation	Disposition
(2) Employee 1 was generally critical of the poor quality of science at EPA.	Since this matter is in litigation, EPA had no comment other than to reject the employee's version of the facts.	See allegation (1).	The employee applied for a promotion and filed a complaint with the Department of Labor on February 27, 1998, after the promotion was denied. According to the employee, all four EPA officials serving on the employee's panel recommended against promotion because certain data were missing from the promotion package. According to the employee, his promotion application had been denied even though all five outside experts involved in the process unanimously supported it.	A Department of Labor investigator determined on August 18, 1998, that the employee was discriminated against by EPA and that the promotion process was inherently flawed because the promotion process was not defined. The investigator recommended that the employee be provided an opportunity to present his promotion package to a new promotion panel and, if approved, that the employee be provided back pay from the date he could have been promoted had the original promotion panel selected him. Both parties requested a hearing before the Office of Administrative Law Judges. The proceeding was stayed pending the outcome of a settlement discussion. The settlement reached included the employee's withdrawing his case and EPA's paying for a 2-year Intergovernmental Personnel Act assignment for the employee at the University of Georgia. The settlement also included EPA's agreement to consider a request for an extension beyond the original period, and the employee's agreement to resign or retire no later than May 28, 2003. The employee began his 2-year assignment with the University of Georgia on December 13, 1998.

Allegation	EPA's comments on allegation	Action taken by employee	Alleged retaliation	Disposition
(3) Employee 1 was generally critical of the poor quality of science at EPA.	Since this matter is in litigation, EPA had no comment other than to reject the employee's version of the facts.	According to the employee, in June 1998, he was contacted by the New Hampshire chapter of the Sierra Club to serve as an expert witness in litigation against the state of New Hampshire on EPA's rule governing the land application and disposal of sewage. Permission was granted by EPA for the employee to be an expert witness. The employee stated that it appeared that an EPA management official attempted to discredit his planned testimony as a witness. On December 1, 1998, the employee filed a complaint with the Department of Labor.	The employee stated that an EPA official intentionally and knowingly interfered with activities protected under whistleblower statutes. The employee alleged that an EPA official, in testimony to the New Hampshire House of Representatives said (1) that the employee would attempt to misrepresent himself as speaking on behalf of the agency when he would not be and (2) that the employee's testimony to be given was false. In his complaint, the employee stated that EPA's actions would harm his reputation, result in the loss of wages, and interfere with his ability to engage in protected activities. He stated that his future financial support will be derived from consulting and expert witness work done to supplement his federal retirement pension. He also alleged that the EPA official's testimony on the EPA rule governing land application and disposal of sewage questioned the employee's credibility and thus jeopardized his standing as an expert witness.	The Department of Labor has not ruled in this case.

Allegation	EPA's comments on allegation	Action taken by employee	Alleged retaliation	Disposition
(4) Employee 2 stated that, on the basis of scientific evidence, a 1990 EPA wood preserving rule does not go far enough to protect the environment. The employee stated that a contractor study on dioxin was used to support the regulation, but that other studies supporting a stronger regulation were available.	EPA stated that the employee's allegations were extensively investigated and that EPA has appropriately regulated wood preserving waste chemicals that include dioxins.	Beginning in 1988, the employee filed a series of complaints against EPA with the Department of Labor that alleged retaliation for various actions the employee believed were protected by the statutory whistleblower provisions. The employee filed a complaint with the Department of Labor on April 11, 1988, alleging adverse actions were taken against her. Subsequently, she filed four amended complaints on July 12, 1988; September 27, 1990; May 28, 1991; and November 13, 1991. On February 28, 1996, all the employee's allegations were consolidated in one document. The employee's actions concerning the dioxin study were among the issues in the case. In 1991, the employee wrote a letter of complaint to a Congressman about the contractor study EPA used to support the rule on wood preserving waste chemicals.	The contractor wrote a letter to the EPA Administrator complaining about the employee, which resulted in an Inspector General (IG) investigation of the employee. According to the employee, the IG investigation found that she had written a letter to a Member of Congress using EPA letterhead, a violation of federal regulations.	In one complaint, a Department of Labor Administrative Law Judge issued a Recommended Decision and Order on December 14, 1992, ordering EPA to offer the employee reinstatement to her former or a comparable position and to compensate her for costs. This decision was adopted by the Secretary of Labor on May 18, 1994. For the second case, on July 10, 1998, a Department of Labor Administrative Law Judge determined that any adverse actions EPA took against the employee from 1987 to 1991 were taken for legitimate business reasons and were not retaliatory. The Administrative Law Judge recommended that the case be dismissed in its entirely.

Allegation	EPA's comments on allegation	Action taken by employee	Alleged retaliation	Disposition
(5) Employee 3 stated that he had concerns about the way the Summitville Superfund Site was being cleaned up. The employee stated that EPA did not perform the required risk assessment before beginning the site cleanup. In addition, the employee stated that he questioned EPA's cleanup method of moving the waste piles and covering them up with dirt. He was concerned about the leaching of copper through the soil and into the water supply. The employee performed field studies to quantify the copper exposure to sheep grazing in the area. The study reported that copper levels were 23 times higher than in the controlled environment. To the employee, this amount of copper suggested a significant danger to the sheep ranching industry. However, according to the employee, EPA and the state were not concerned with the findings of the study. The employee recommended more studies be done, but EPA did not perform any more studies.	According to EPA, it can take cleanup actions based on very limited documentation of risk posed by a site. At Summitville, it identified four areas of cleanup activities, with management approval of the corresponding cleanup interim records of decisions. These decisions were based on fully completed and peer-reviewed baseline human health and ecological risk assessments according to EPA. EPA stated the allegation was correct in that EPA was not concerned about a significant risk of copper far downstream from the site. A follow-on field sampling program to investigate areas of uncertainties was commissioned by EPA. EPA stated that another source of contamination as great or greater than the Summitville site is suspected but has never been found.	According to the employee, he wrote a letter to the EPA Administrator discussing the Summitville Superfund Site and stating that a risk assessment had never been done on the site. The employee filed a complaint with the Department of Labor on December 23, 1997, alleging discrimination in retaliation for protected activities.	According to the employee, 5 days after he released the results of his study, the EPA's Inspector General (IG) started a criminal investigation of his activities. The employee stated that the IG tried to prove that he had a conflict of interest because he was a graduate student using agency training funds at the same time he was involved with the Summitville site.	The Department of Labor investigator determined on January 28, 1998, that the employee had not been discriminated against as a result of protected activities. On February 2, 1998, the employee filed a request for a hearing before the Office of Administrative Law Judges. In his complaint, the employee cited his work at the Summitville Superfund Site and claimed his ability to perform the critical and time-sensitive work was compromised by his management chain of command and by the EPA's Office of Inspector General. In June 1998, the Office of Administrative Law Judges conducted a hearing. Subsequently, the parties reached a settlement of the complaint, and an order recommending dismissal of the matter was issued on October 14, 1998. According to the employee, as part of the settlement, he received a $100,000 payment from EPA. On November 7, 1998, the employee resigned from EPA.
(6) Employee 4 stated that EPA used scientific data from a contractor to support a regulation on particulate matter (issued in 1997) but that EPA was denied access to the supporting data from the contractor.	EPA's Office of Administration and Resources Management, which awarded the contract, stated that it was unaware of such an incident. EPA further stated that the employee's allegation did not contain sufficient information or details to formulate a response.	None.	Not applicable.	Not applicable.

Allegation	EPA's comments on allegation	Action taken by employee	Alleged retaliation	Disposition
(7) Employee 5, of EPA's Office of Research and Development, stated that EPA regulations are not based on the best science. The example presented was the Alar pesticide rule (issued in 1990). The employee could not provide any details or other information supporting her allegation.	EPA's Office of Research and Development stated that it reviewed and commented on the risk assessment for the Alar pesticide rule, which was developed elsewhere in EPA. The Office of Research and Development further stated that the rule was peer-reviewed by scientists outside EPA as well as by EPA's Science Advisory Board.	None.	Not applicable.	Not applicable.
(8) Employee 6 stated that EPA regulations were sometimes based on scientific data of marginal quality that EPA manipulated to support the regulations. Two examples were presented. -- The wastewater discharge for organic chemicals, plastics, and synthetics rule (issued in 1987): The employee stated that in developing this rule, some data were selectively used while other data were discarded. -- The secondhand smoking rule: The employee stated that EPA's risk analysis, which was based on extrapolation of data derived from animal tests to humans, was "bogus."	EPA's Office of Research and Development stated that it disputed the employee's allegations. -- For the wastewater discharge rule, EPA's Office of Research and Development stated that it had no knowledge of data manipulation intended to gain acceptance of the rule. -- EPA pointed out that there is no secondhand smoking rule but a risk assessment of the issue was done in 1992. EPA stated that no direct animal data extrapolation was used in the risk assessment but that animal test data were supportive of data obtained from human health studies.	None.	Not applicable.	Not applicable.

Allegation	EPA's comments on allegation	Action taken by employee	Alleged retaliation	Disposition
(9) Employee 7 (a grantee employee) stated that certain EPA regulations have been issued that were not well supported by scientific evidence. One such regulation, according to the grantee employee, is the rule governing the land application and disposal of sewage sludge (issued in 1993). The grantee employee stated that EPA used a corn study to show that crops would not be affected by the heavy metals or human pathogens in the sludge, but EPA did not consider other crops or the effect on animals when it issued its rule. The grantee employee also contended that recently a number of cattle in Georgia had died after grazing on areas to which sludge had been applied.	EPA's Office of Research and Development disputed the allegations. It stated that it used all crops for which data were available in its study for the regulation. It also commented that the effects on both humans and animals were fully considered in promulgating the rule.	None.	Not applicable.	Not applicable.

Table I.2: Specific Allegations: Mismanagement of Contracts

Allegation	EPA's comments on allegation	Action taken by employee	Alleged retaliation	Disposition
(10) According to employee 8, EPA and a contractor entered into a verbal agreement for the contractor to provide free services to EPA for 4 months. The employee alleged that this was an unauthorized augmentation of appropriated funds. The free services were in connection with the development of a travel tracking system.	According to EPA, the Inspector General investigated the allegations of an unauthorized augmentation of appropriated funds and did not refer the matter for further actions.	The employee reported the issue to the Office of Inspector General.	The employee filed a complaint on March 22, 1993, with the Office of Special Counsel, stating that he had been relieved of his position as Chief, Systems and Accounting Branch, and placed in an unclassified position.	According to EPA, the Office of Special Counsel completed its investigation of alleged retaliation against the employee and notified EPA that the investigation revealed insufficient evidence to warrant further actions. According to the employee, he and EPA agreed that he would be reassigned to a different position.

Allegation	EPA's comments on allegation	Action taken by employee	Alleged retaliation	Disposition
(11) Employee 4 stated that there is considerable undue political influence in contracting that is condoned at the highest levels of EPA. The employee alleged that the award process for one contract included irregularities and that a number of wrongdoings occurred in another contract.	The Inspector General (IG) conducted an audit of the contract involving the award process allegation. According to EPA, this audit began before the employee contacted the IG. EPA also stated that the employee testified at a hearing that he had no personal knowledge about the contract. The contract was canceled in 1991 because of irregularities in the selection and award process discovered during the audit. The IG conducted an audit of the second contract and reported EPA (1) bypassed the General Services Administration and the "intent of several laws" by using an EPA contractor to acquire a building without specific authority to do so, (2) preselected the building site and manipulated the procurement process in order for the EPA contractor to lease the desired building, (3) failed to make and retain documentation of significant decisions and activities related to the establishment of the facility, (4) paid about $3.8 million more to lease and renovate the building than it would have cost to purchase such a building outright, and (5) violated the Antideficiency Act when it ordered that the building lease run longer than the available appropriation.	The employee contacted the Office of Inspector General and the Office of General Counsel (OGC) and discussed contract irregularities regarding several specific contracts. The employee filed a complaint alleging retaliation with the Office of Special Counsel on February 3, 1993.	The employee alleged that EPA officials lowered his performance rating because of his disclosures of information to the OGC and the IG.	The Office of Special Counsel issued its ruling on October 28, 1994, determining that the evidence supported the employee's allegation that EPA lowered the performance rating because of his disclosures to the OGC and IG. The Office of Special Counsel recommended that EPA raise the employee's rating on his 1992 annual performance appraisal and take disciplinary action against the supervisor who lowered the rating. The Office of Special Counsel stated that EPA's management treatment of the employee was part of a larger pattern of harassment of employees within EPA's Contracts Management Division. EPA agreed to remove the employee's 1992 appraisal from his employee performance folder.

Allegation	EPA's comments on allegation	Action taken by employee	Alleged retaliation	Disposition
(11) Continued		The employee filed a complaint on March 1, 1996, with the Merit Systems Protection Board.	The employee alleged that EPA failed to promote him, placed "derogatory" statements in his performance appraisal, and subjected him to an abusive and harassing work environment in retaliation for his protected disclosures.	EPA complied with all of the Office of Special Counsel's recommendations. The employee, however disagreed with the Office of Special Counsel's recommendations, and requested further relief by filing an Individual Right of Action appeal to the Merit Systems Protection Board. The Merit Systems Protection Board Administrative Judge and the full Board on July 2, 1996, found that the employee had not been retaliated against. The employee appealed this decision to the U.S. Court of Appeals for the Federal Circuit. The court denied the appeal and affirmed the Board's denial of corrective action.

Allegation	EPA's comments on allegation	Action taken by employee	Alleged retaliation	Disposition
(12) An EPA regional office employee (employee 9) stated that EPA had awarded a performance-based contract for cleanup at a Superfund site in Mississippi but did not have adequate scientific data on which to base the performance measures. As a consequence, the employee stated, the contractor had lost money on the contract. Subsequently, EPA issued a modification to the contract, according to the employee, even though federal acquisition regulations would have required the contract to be re-advertised.	In connection with the allegation that EPA did not have adequate scientific data on which to base performance measures, EPA stated that it provided the bidders with the best scientific information available to it at the time the solicitation was issued. The contract was later modified by incorporating revised performance treatment standards for the cleanup. In response to the allegation that the contractor had lost money on the contract, EPA stated that when the contract modification was made, $234,500 was added to cover additional requirements contemplated and within the scope of the original contract requirements. EPA also pointed out that the contractor could have pursued, but agreed not to, reimbursement of additional costs due the company as part of the contract modification. In response to the allegation that federal acquisition regulations would have required the contract to be re-advertised, EPA stated that the contract modification was fair, reasonable, and in the best interest of the government and that the change in the performance standards did not require a re-advertising for bids.	The employee stated that she called the state of Texas and the EPA regional office in Dallas to tell them that Texas planned to award a similar contract and similar problems could result. The employee filed a complaint with the Department of Labor in April 1998, alleging ongoing retaliation when she was not promoted.	The employee stated that EPA initiated an Inspector General criminal investigation of her activities, alleging that she was interfering in contracting. She also stated she had been given a "do-nothing" job involving the management of automated data processing equipment. Furthermore, she alleged that she was removed from her workspace and forced to work in a library.	The Department of Labor investigator determined in October 1998 that there was no evidence of retaliation. The employee has requested a hearing before the Office of Administrative Law Judges. The case is currently in litigation.

Allegation	EPA's comments on allegation	Action taken by employee	Alleged retaliation	Disposition
(13) Employee 2 stated that EPA contractors are too close to representatives of regulated industries. The contractor involved in this allegation did work for EPA to help develop RCRA regulations. The employee complained to the Inspector General that her supervisor was not following federal acquisition regulations in the management of contracts. Specifically, contractor personnel had directed EPA supervisors to change the statement of work to meet objections from the regulated industry.	According to EPA's Office of Solid Waste, it was not aware that any allegations regarding contractors being too close to representatives of regulated industries had been forwarded to the IG by this employee.	According to the employee, she reported the issue to the IG, and the complaint is currently being investigated by the IG.	Not applicable.	Not applicable.

Table I.3: Specific Allegations: Miscellaneous

Allegation	EPA's comments on allegation	Action taken by employee	Alleged retaliation	Disposition
(14) A Denver regional employee (employee 10) said a state management inspection plan for identifying the presence of pesticides for a state and several Indian tribes was inadequate. Also, this employee stated that grants awarded to another state represented bad science and were improper or illegal uses of EPA funds.	EPA stated that it could not fully respond to this allegation because the specific state management inspection plan and state grants at issue were not identified.	The employee refused to approve the state inspection plan, stating that the planned program was inadequate. The plan involved identifying the presence of five pesticides. The employee also refused to sign off on EPA grants to a state that he felt represented bad science and were improper or illegal uses of EPA funds. On November 14, 1994, the employee complained to EPA that he was discriminated against with respect to a number of terms and conditions of employment.	Since refusing to sign off on the state management inspection plan, the employee states that he has been moved from one program to another and has been the target of racial harassment by fellow employees. The employee was also detailed on May 21, 1997, from the Denver regional office to Athens, Ga., at his own expense and then suspended for 9 days for using a government credit card to cover some of the expenses in Athens.	EPA investigated and on August 15, 1997, issued a Final Agency Decision finding no discrimination against the employee. According to EPA, the employee did not appeal the Final Agency Decision. According to EPA, the employee was in fact suspended for 9 days for the inappropriate use of a government credit card. EPA state that it took appropriate disciplinary action in response to the employee's misconduct. On March 3, 1998, the employee filed a second complaint of discrimination with EPA. That complaint was ultimately withdrawn by the employee, with prejudice. The employee resigned from EPA, effective September 30, 1998.

Allegation	EPA's comments on allegation	Action taken by employee	Alleged retaliation	Disposition
(15) According to a former EPA grantee employee (employee 7), an acquisition manager at an EPA laboratory worked actively to terminate his employment because (1) he worked closely with an EPA employee (employee 1) in voluntary religious activities and (2) he also participated with the EPA employee at a meeting with a Member of Congress and publicly supported the EPA employee's criticisms of EPA science. The grantee employee alleged retaliation by an EPA employee who interfered with his request to obtain federal employment with EPA.	According to EPA, no one sought to terminate this employee. A number of contractor employees, including this employee, had applied to be hired under an agency grant. In 1995, the laboratory in Athens, Ga., reviewed whether it was appropriate to hire these contractor employees and determined that it was appropriate. In June 1997, while the employee was still working as an EPA grantee employee, the employee was offered a federal position in the Athens laboratory. According to EPA, the employee refused the position.	The grantee employee filed a complaint with the Department of Labor on March 12, 1998.	The grantee employee stated that he had been targeted for retaliation by EPA officials for his close personal and professional relationship with an EPA whistleblower.	The Department of Labor investigated the complaint and on June 17, 1998, stated that it found no discrimination. The grantee employee requested a hearing before the Office of Administrative Law Judges but withdrew his complaint in July 1998. The grantee employee left EPA in August 1998 because the grant he was working under was due to expire.

Allegation	EPA's comments on allegation	Action taken by employee	Alleged retaliation	Disposition
(16) Employee 8 reported to EPA that he was concerned about EPA's financial systems because (1) the systems lack flow charts, (2) there is an increased emphasis on processing documents as fast as possible with no regard for accounting or system controls, and (3) there are examples of government waste, including the resources required to design and program three different document tracking systems and the operational resources required to enter all data into two systems: the document tracking system and the agency's accounting system.	EPA stated that its management and the Inspector General have had ongoing reviews of the adequacy of the agency's financial systems. EPA stated that it is continuing to improve and enhance these systems, consistent with prudent business and security practices, and within budget constraints. EPA also agreed that some duplication of data entry is often part of the phase-in of a new system and serves as a management control. According to EPA, this duplication is gradually eliminated as the systems are improved and enhanced.	None.	None.	Not applicable.

Table I.4: Employees Without Specific Allegations but Who Alleged Retaliation

Allegation	EPA's comments on allegation	Action taken by employee	Alleged retaliation	Disposition
Employee 11 did not make a specific allegation but stated that he was protesting fraud, waste, and abuse in the EPA Region VIII Office.	EPA had no specifics from this employee to comment on.	The employee filed a complaint with the Office of Special Counsel alleging that EPA had committed fraud, waste, and abuse in the manner in which the agency was allocating funds to states and Indian tribes in the region, that a state employee had been instructed to avoid meeting with him, and that he had been falsely accused of sexual harassment.	The employee alleged retaliation by EPA in that management was preventing him from doing his job, giving him mediocre appraisals, and making derogatory remarks and filing false accusations about him. He also alleged that regional management had also retaliated against him by spreading rumors about him.	On October 27, 1997, the Office of Special Counsel determined that the employee's complaint did not rise to the level of a protected disclosure. The employee sought corrective action from the Merit Systems Protection Board. On May 15, 1998, the Denver Office of the Board dismissed his appeal. The employee appealed the decision to the full Board. A final decision by the Board is pending. On January 15, 1999, the employee was dismissed from the agency.

Allegation	EPA's comments on allegation	Action taken by employee	Alleged retaliation	Disposition
The employee (employee 12) had no specific allegations.	Since no specific allegation was made, EPA had nothing to comment on.	The employee filed a complaint with the Department of Labor on August 15, 1994, alleging that EPA retaliated against him by issuing a derogatory memorandum regarding his work performance. The employee subsequently alleged that EPA further retaliated against him by giving him a mediocre rating for 1994.	The employee claimed that EPA retaliated against him in response to a 1994 memorandum he prepared that criticized EPA's policy regarding dioxin.	The Department of Labor investigated the complaint and on December 8, 1994, determined that EPA had not retaliated against the employee. The employee requested a hearing before the Office of Administrative Law Judges. The Department of Labor dismissed the complaint on November 1, 1995, at the request of both parties. The settlement of the case is subject to confidentiality provisions.
Employee 12 had no specific allegations.	Since no specific allegation was made, EPA had nothing to comment on.	On October 16, 1996, the employee filed a complaint with the Department of Labor alleging that EPA had retaliated against him and that EPA violated the terms of the settlement agreement reached in his previous case.	The employee alleged that EPA changed his position description in a manner that would require him to perform lower-graded duties.	The Department of Labor investigated the complaint and on June 17, 1997, determined that EPA had not retaliated against the employee. On June 23, 1997, the employee requested a hearing before the Office of Administrative Law Judges. The complaint was dismissed by the Department of Labor on December 19, 1997, at the request of both parties. The settlement of the case is subject to confidentiality provisions.

SUMMARY STATUS OF WHISTLEBLOWER COMPLAINTS
FILED BY SIGNERS OF THE WASHINGTON TIMES ARTICLE
AS OF DECEMBER 31, 1998

Employee identification numbers	Number of complaints filed	Resolved in favor of employee	Dismissed at request of both parties	Resolved in favor of EPA	In litigation
1	3	2			1
2	2	1			1
3	1		1		
4	1			1	
7	1		1		
9	1				1
11	1				1
12	2		2		
Total	**12**	**3**	**4**	**1**	**4**

Notes: The employees' numbers are the same as shown in tables I.1 through I.4 in enclosure I, where the specific complaints are described.

All complaints were filed with the Department of Labor except for those of employees 4 and 11, which were filed with the Office of Special Counsel and the Merit Systems Protection Board.

The cases shown as resolved in favor of employees include two mutually agreed upon settlements between the employees and EPA in which the employees received some form of compensation.

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