

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

HUGH B. KAUFMAN,)	
)	
Complainant)	No. 2002-CAA-00022
v.)	Administrative Law Judge
)	Thomas M. Burke
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
and)	
)	
Stephen L. Johnson, Administrator,)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, in his Official)	
Capacity)	
)	
Respondents)	
)	

COMPLAINANT’S FIRST AMENDED AND SUPPLEMENTED COMPLAINT

As his First Amended and Supplemented Complaint in this action, the Complainant (“Mr. Kaufman”) submits the following:

I. THE NATURE OF THE PROCEEDING

1. This case involves whistleblower claims of Complainant Hugh B. Kaufman against the Environmental Protection Agency (hereafter “EPA,” “Agency,” or “Respondent”). Mr. Kaufman charges that the Agency took illegal actions to preclude his performance of Ombudsman duties, and generally retaliated against him for his protected activities. The claims involve events spanning 1999 through 2002. The evidence will show that as the Chief Investigator for the Agency’s National Ombudsman, Mr. Kaufman enjoyed wide support from both Republican and Democratic members of the U.S. Congress and from communities

across the nation. In contrast, the Agency was incensed at his public and internal statements that included charges EPA failed to protect Americans from environmental hazards. As a result of Mr. Kaufman protected statements and actions, the Agency illegally retaliated against him. The Agency also systemically retaliated against employees of the National Ombudsman function generally. After an investigation, the U.S. Department of Labor ruled on July 12, 2002 that the Agency violated Mr. Kaufman's rights in "reprisal for performing a 'too effective job' in support of the Ombudsman program." The Agency appealed the ruling, leading to this proceeding. This complaint amends and supplements his original complaints of April and May 2001.

II. THE PARTIES

2. Hugh B. Kaufman ("Complainant" or "Mr. Kaufman"), a resident of the District of Columbia, is and was at all times relevant to this proceeding an employee of the Office of Solid Waste and Emergency Response ("OSWER"), an office within the United States Environmental Protection Agency.
3. The United States Environmental Protection Agency ("Respondent" or "Agency" or "EPA") is an executive agency of the United States government, headquartered in Washington, DC.
4. Stephen L. Johnson has served as the Administrator of the United States Environmental Protection Agency since May 2, 2005.

III. JURISDICTION

5. The United States Department of Labor has jurisdiction to adjudicate whistleblower complaints that are filed pursuant to § 322 of the Clear Air Act (CAA) (42 U.S.C. § 7622); § 110 of the Comprehensive Environmental Response, Compensation, and Liability Act

(CERCLA) (42 U.S.C. § 9610); § 507 of the Federal Water Pollution Control Act (FWPCA or Clean Water Act) (33 U.S.C. § 1367); § 1450(i) of the Safe Drinking Water Act (SDWA) (42 U.S.C. § 300j-9); § 7001(a) of the Solid Waste Disposal Act (SWDA) (42 U.S.C. § 6971); the Toxic Substances Control Act (TSCA) (15 U.S.C. § 2622) and § 211 of the Energy Reorganization Act (ERA) (42 U.S.C. § 5851), collectively the “Whistleblower Acts.”

6. For purposes of the paragraphs set forth below, the term “Respondent” means collectively the Agency and Stephen L. Johnson in his official capacity as Agency Administrator.

IV. STATEMENT OF THE FACTS

7. Since it was created in the early 1970s, Mr. Kaufman has been employed at the EPA as an engineer and policy analyst. Prior to joining the Agency, he was an officer in the United States Air Force during the Vietnam conflict, where he rose to the rank of Captain. He has a Bachelor of Science degree in Electrical Engineering with a minor in Chemistry, and a Masters degree in Engineering Administration with a major in Operations Research, both from The George Washington University in Washington, DC.
8. Over the years Mr. Kaufman's duties at the Agency have included responding to inquiries from citizens, the industry, and Congress regarding hazardous waste disposal and cleanup. He has provided information to Congress on a wide range of hazardous waste and cleanup issues, and has participated in formulating the majority of hazardous waste cleanup laws, regulations and policies of the Agency. Mr. Kaufman has participated in assessing and cleaning up a range of hazardous waste sites across the country.
9. The OSWER office is a programmatic office charged with protecting the public health and the environment from the risks of hazardous material releases that are a threat to the public

health and environment, cleaning up uncontrolled hazardous waste sites, and responding to and preventing hazardous material and/or waste-related releases that are a threat to the public health and environment.

10. Operating out of OSWER, Robert Martin served as the Agency's national ombudsman ("National Ombudsman") from October 18, 1992 until April 22, 2002.
11. The National Ombudsman function was largely a programmatic function designed to provide a transparent process for Congress, industry and members of the public. It answered inquiries and complaints made by the public, industry and Congress regarding hazardous and solid waste sites pursuant to CERCLA, and investigated those inquiries and complaints and helped provide response and, if possible, relief by the Agency without the need for protracted litigation. Such sites include those on the Agency's National Priorities List ("Superfund" sites), which the EPA identifies as warranting remedial actions. The National Ombudsman mediated between parties to such disputes, convened hearings regarding environmental hazards, and generally informed the public, industry, the legislative branch, and the Agency regarding hazardous waste cleanup and disposal. *Doc. 104218 is a true and accurate copy of Agency testimony.*¹
12. For all times relevant to this proceeding, the standards of practice adopted by the Ombudsman Committee of the American Bar Association and the U.S. Ombudsman Association incorporated the core principles of independence, impartiality, and confidentiality. *Doc. 96680 is a true and accurate copy of comments provided to the EPA, and Doc. 103787 is a true and accurate copies of the Federal Register.*

¹ References to Documents herein refer to attached Bates-stamped documents, included consecutively numbered pages that directly follow the first page.

13. Not consistent with those ombudsman guidelines, National Ombudsman Martin did not control his own budget and did not have hiring authority.
14. Because Martin's role was to mediate between the Agency, industry, elected officials, and local communities when disputes arose over the Agency's response to hazardous waste remediation, this lack of independence created an inherent institutional conflict. The Agency could, and increasingly did during his tenure, interfere with National Ombudsman Martin's pursuit of outcomes it opposed through the control of his resources.
15. National Ombudsman Martin's immediate supervisor was the Deputy Assistant Administrator for OSWER ("DAA") Michael Shapiro, and his second-line supervisor was the Assistant Administrator for OSWER ("AA"), a Presidential appointee.
16. Originally, Ombudsman Martin was permitted to choose the Agency staff he wanted to assist him with carrying out his duties. Such assistance did not require that the employee have authorization to perform ombudsman duties in their official position description.
17. Towards the end of 1997, Ombudsman Martin asked Mr. Kaufman to serve as his primary staff person and chief investigator, an offer which Mr. Kaufman accepted.
18. Ombudsman Martin believed that Mr. Kaufman's decades of experience with the Agency gave him more expertise in solid waste management, disposal, and cleanup than any other person within OSWER, and that Mr. Kaufman had, and continued to have tremendous integrity among policymakers and both Republican and Democratic members of the U.S. Congress, the major ombudsman constituency.
19. Once Mr. Kaufman began assisting Ombudsman Martin in 1997 until at least December 14, 2000, the National Ombudsman function was primarily performed by two persons – Robert Martin and Mr. Kaufman. The function operated with a budget of \$301,000 for fiscal year

2000 (ending September 30, 2000) and \$518,000 for fiscal year 2001. *Doc. 103381 is a true and accurate copy of a document created internally at the Agency by one or more Agency employees in the course of performing their job responsibilities ("EPA DOC" – singular and plural). Doc. 104352 is a true and accurate copy of budget figures provided by EPA to the U.S. Congress which was produced by the EPA in this proceeding..*

20. During the time Mr. Kaufman staffed the National Ombudsman, his title was Senior Engineer/Chief Investigator to the National Ombudsman. At least 95 percent of his assignments came from National Ombudsman Martin, and his salary was fully paid out of this annual allocation of funds to the National Ombudsman function.

21. Mr. Kaufman cares passionately about the EPA's mission to protect the health and safety of America's communities. In pursuing that goal, he has won wide praise for his ability to get to the heart of complex environmental issues, explain those issues to non-scientists, and bring fairness to a process that is otherwise inaccessible to the average citizen or Member of Congress.

Shattuck Ombudsman Hearings

22. In January 1999, U.S. Senator Wayne Allard (R-CO) blocked the confirmation hearing of nominee Timothy Fields, who was slated to become the EPA Assistant Administrator for OSWER. The Senator would not allow Mr. Fields to be confirmed without a promise from Mr. Fields to refrain from taking any action that would compromise the independence of the National Ombudsman in his new capacity. Mr. Fields made that promise in the presence of National Ombudsman Martin, and he was confirmed. *Doc. 90590 is a true and accurate copy of a letter from a member of the United States Congress ("MOC" – singular and plural). Doc. 90584 is a true and accurate copy of an EPA DOC.*

23. On April 13, 1999, Mr. Kaufman received a "Superior Accomplishment Recognition Award" of \$1000 because of his performance assisting the National Ombudsman at two hazardous waste site addressing "controversial issues in a manner that enhanced the credibility of the Agency." This was the second such award he received. *Doc. 002182 is a true and accurate EPA DOC describing a performance award.*
24. During the summer of 1999, the EPA convened a task force to develop guidelines for the National Ombudsman. *Doc. 100442 is a true and accurate copy of an EPA calendar entry.*
25. On September 18, 1999 and October 16, 1999, Mr. Kaufman chaired Ombudsman hearings on the Shattuck Chemical Superfund Site ("1999 Shattuck Hearings") in Denver, Colorado, at the request of U.S. Senator Allard. The hearings explored citizen complaints regarding the on-site entombment of radioactive waste at the Shattuck Superfund site pursuant to a "Record of Decision" signed by the Agency in 1992. The cleanup plan addressed issues that are covered under one, if not all, of the Whistleblower Acts. *Doc. 000180 and 000081 are true and accurate copies of National Ombudsman hearing transcripts. Docs. 2200 and 2232 are true and accurate copies of EPA Record of Decision documents.*
26. At the 1999 Shattuck Hearings, Mr. Kaufman identified facts suggesting EPA followed improper procedures in selecting the remedy in 1992. The hearings revealed that selected remedy -- to cover the radioactive waste with a protective cap rather than remove it -- posed a threat to the health and safety of the community. The hearings showed no system existed to monitor radioactive leakage into the groundwater, and evidence was presented that EPA colluded with the polluter. Community representatives reported the EPA was unresponsive to their inquiries and withheld documents. *See e.g., Doc. pages 000205-07, 000210, 000223-26, 000231-39, 000087- 91, 000093-95, 000114-17, 000120-135, 000140-41.*

27. In October 1999, U.S. Senator Allard publicly praised the 1999 Shattuck Hearings and severely criticized EPA for refusing to meet with citizens regarding the site and withholding documents from the public. Senator Allard was soon joined by U.S. Representative Diana DeGette (D-CO) in publicly urging a reversal of the 1992 remedy and removal of the radioactive waste from the site. *Docs. 002499 and 002502 are true and accurate copies of articles appearing in a published newspaper ("News Article")*.
28. On October 21, 1999, U.S. Senator Allard introduced S.1763, the "Ombudsman Reauthorization Act of 1999," which would create a formal Office of the Ombudsman with hiring authority and control of his own budget. The bill directly resulted from the Senator's frustration with the EPA's actions at the Shattuck Superfund site. *Doc. 02633 is a true and accurate copy of a bill introduced in the U.S. Congress ("Bill")*. See *Doc. 002499*.
29. On October 25, 1999, National Ombudsman Martin presented his preliminary report on the Shattuck site to AA Fields based on the 1999 Shattuck Hearings chaired by Mr. Kaufman. the report outlined direct scientific testimony that the protective cap that had been pursued pursuant to the 1992 remedy that was supposed to protect the community for 100-1,000 years might not last more than 5-15 years. The report found that radioactive waste could leak into the groundwater, and that the current groundwater monitoring mechanism could not detect such leaking. The Ombudsman recommended amending the remedy to completely remove the radioactive waste rather than capping it. *Doc. 02288 is a true and accurate copy of an EPA DOC*.
30. On January 29, 2000, Mr. Kaufman chaired a third Ombudsman hearing on the Shattuck Superfund site in which the Agency was painted as a bad actor for withholding documents, not properly documenting the findings from a recent review of the proposed revised remedy, taking too long to get to the cleanup, and it raised the specter that EPA Region 8 may be in collusion

with the polluter on this site. *Doc. 100485 is a true and accurate EPA DOC in the form of an Electronic mail ("EPA E-Mail") with an attachment.*

31. On June 16, 2000, the Agency was forced to reverse the 1992 remedy for the Shattuck site, deciding to completely remove the radioactive waste from the site as per Ombudsman Martin's October 25, 1999 recommendation. This resulted in an increased cost of \$7.2 million to Shattuck, wholly owned by Citigroup, but this comprised only a small percentage of the estimated minimal \$21.5 million cost, a figure that in time increased dramatically. The federal government agreed to shoulder the open-ended residual costs of the removal. *See Doc. 002200.*

32. On January 20, 2000, Mr. Kaufman received a fully Successful performance evaluation from his supervisor, DAA Shapiro with no adverse comments. For all prior years in which Mr. Kaufman performed Ombudsman duties, he received the same fully Successful performance rating with no adverse comments. *Doc. 000324 is a true and accurate copy of an EPA DOC.*

The Tarpon Springs Ombudsman Hearings

33. On December 2, 1999 and February 12, 2000, at the request of then-Representative Michael Bilirakis (R-FL), Mr. Kaufman chaired Ombudsman hearings concerning the Stauffer Chemical site in Tarpon Springs, Florida. He was to explore citizen complaints regarding EPA's proposed cleanup plan of the former phosphorous processing plant contained in a proposed "consent decree." The plan to address the hazardous materials on the site, largely comprising radium, arsenic, and phosphorus, addressed issues that are covered under one, if not all, of the Whistleblower Acts. *Doc. 100714 is a true and accurate copy of and EPA DOC containing notes.*

34. At the hearings, Mr. Kaufman uncovered the possibility that sinkholes could develop under the mounded soil, causing a collapse that could send toxic contaminants into the area's drinking water. He also explored whether the site was properly "characterized," a process which identifies the nature of the hazards. Mr. Kaufman also explored the critical issue of whether the polluters had the resources to finance the cleanup outlined in the consent decree. *See Doc. 100714.*
35. Community activists in Tarpon Springs wanted the hazardous materials at the Stauffer site completely removed, which would cost \$100 million as opposed to the \$10 million cost of capping the waste as proposed in the original consent decree approved by the Agency.
36. Sometime during this period, Mr. Kaufman contacted the Office of Inspector General (OIG) to discuss how to refer potential criminal activity he uncovered in his Ombudsman investigations. For instance, he suspected that the polluter at the Stauffer Superfund site lacked the assets necessary to finance the cleanup remedy under CERCLA. Mr. Kaufman suspected that Agency may have improperly approved the remedy nonetheless. OIG General Counsel Mark Bialek attended the meeting with an Assistant Inspector General, and Mr. Kaufman attended with the co-chairman of the American Bar Association Committee on the Ombudsman. The OIG representatives described the referral process at length, and raised the issue of providing an "advise of rights" warning. They described to Mr. Kaufman the importance of his Ombudsman witnesses being provided such warning and provided Mr. Kaufman documents describing legal bases for such warnings. *Doc. 001395 is a true and accurate copy of an EPA DOC.*
37. Mr. Kaufman also uncovered new evidence suggesting that a secret corporate change in Stauffer site ownership occurred that would further limit the polluter's ability to pay for the

cleanup. He suspected the Stauffer Superfund site owners and EPA regional officials made false statements in both court documents and at an Ombudsman hearing in a manner that may be fraudulent.

38. Articles in the St. Petersburg Times on January 16, 2000 and February 13, 2000 described the community support for Ombudsman Martin and Mr. Kaufman in Tarpon Springs and their distrust of the Agency. An editorial in the Tampa Tribune calls the EPA a “massive and impersonal bureaucracy” and suggested that the assistance of Ombudsman Martin and Mr. Kaufman “could mark a profound turning point in the battle to implement the most effective and safe cleanup” at Tarpon Springs. *Docs. 002315, 002317, and 002323 are true and accurate copies of News Articles.*
39. On February 15, 2000, U.S. Representative Bilirakis, Chairman of the U.S. House Subcommittee on Health and the Environment, introduced legislation as a companion to Senator Allard’s bill to create an independent National Ombudsman office with hiring and budget authority. *Doc. 002631 is a true and accurate copy of a Bill.*
40. On February 29, 2000, U.S. Representative Bilirakis wrote a letter to Administrator Browner on behalf of a constituent requesting information on the financial ability of a polluter and responsible party at the Stauffer Superfund site to pay for the cleanup. *Doc. 96283 is a true and accurate copy of a letter to the Agency from a MOC.*
41. On April 28 2000, spurred by the Ombudsman hearings chaired by Mr. Kaufman, the Agency offered amendments to its proposed consent decree for the Tarpon Springs site involving new geophysical studies to test for the possibility of sinkholes, proposed tougher standards for cleanup of arsenic in the soil, and new studies on the long-term effectiveness of the capping remedy. *Doc. 103421 is a true and accurate copy of an EPA DOC.*

42. On May 25, 2000, an EPA Region 4 official wrote to U.S. Representative Bilirakis' constituent directly regarding her inquiry into the financial liabilities of a polluter and responsible party at the Stauffer Superfund site in Tarpon Springs. EPA admitted that one of the responsible parties did not have adequate cash flow to cover the cleanup costs, and that the second party recently underwent a corporate merger and name change after signing the consent decree. "EPA recently requested information on that corporate change," the official wrote. The Agency failed to provide her the specific information about ownership that Mr. Bilirakis had requested on her behalf. *Doc. 096281 is a true and accurate copy of an EPA DOC.*
43. In a May 30, 2000, Mr. Kaufman wrote a memo to his supervisor DAA Shapiro reporting the difficulty he and National Ombudsman Martin were having securing authorization for their travel to an Ombudsman hearing scheduled for June 5, 2000 in Tarpon Springs, FL. He also outlined the budget request for the National Ombudsman, and criticized the Draft Ombudsman Guidelines. *Doc. 96698 is a true and accurate copy of an EPA DOC.*
44. U.S. Representatives Oxley (R-OH), Bilirakis (R-FL) and Tauzin (R-LA) intervened directly with Administrator Browner to secure funding for Mr. Kaufman and National Ombudsman Martin to finance their travel to the June 5, 2000 Tarpon Springs hearing.
45. On June 5, 2000, Mr. Kaufman chaired the third Ombudsman hearing regarding the consent decree for the Stauffer hazardous waste site in Tarpon Springs, FL. In their opening remarks, EPA Region 4 representatives startled the participants by abruptly announcing they would not stay to participate in the full two-hour hearing. Rather, the two representatives said they would make a short presentation and take 10 minutes of questions limited to clarifying that presentation. This outraged Congressman Bilirakis, National Ombudsman Martin,

community participants, the press, and Mr. Kaufman. Mr. Kaufman read them the “advise of rights” warning as he had been directed by the Inspector General’s office, and the EPA representatives proceeded with their short technical presentation. When Mr. Kaufman began questioning the EPA about why it allowed the polluter to sign a cleanup agreement and then dissolve itself a month later, i.e. the criminal activity, the tension escalated. Instead of answering, one of the Agency representatives interjected “Is this going to help figure out how to clean up the site? . . . You’ve got two more minutes. . . If this is what you want to hear from Mr. Kaufman talking on and on and on, that’s what you can hear.” U.S. Representative Bilirakis responded ”What do you have to hide, ma’am?” Without answering that question, the EPA representatives got up and left, to the boos of the audience. “These are the servants of the people,” the Chairman of the House Subcommittee on Health and Environment observed in disbelief. *The attached CD-ROM depicts the hearing truly and accurately.*

46. The National Ombudsman did not have subpoena power and could not order the Agency representatives to participate in the hearing or to provide any information to the affected community about the polluter’s ability to pay.
47. Also appearing at the June 5, 2000 hearing was the ombudsman for another federal public health agency and a former cost recovery chief for EPA Region 4. He said he was “blindsided” when he recently learned about the secret corporate reorganization being explored by Mr. Kaufman. He said he “wasted about six years of my life” if it was unimportant to know about the financial ability of a company to pay for a cleanup. He called the walkout of the Region 4 representatives “an affront.”
48. The walkout of the Agency employees had been suggested and encouraged by OSWER’s Director of the Office of Emergency Remediation and Response, Stephen Luftig, who

managed the Superfund program. Mr. Luftig felt great animus towards Mr. Kaufman, and has referred to Mr. Kaufman professionally as "Obergruppenfuher Herr Inquisitor Kaufmann." *Docs. 101269 and 101758 contains true and accurate copies of EPA E-Mail.*

49. Obergruppenführer literally means "Senior Group Leader," and refers to a high-ranking Nazi Party paramilitary rank held by some of the most notorious figures in the Nazi Party's security organization. *Doc. 002635 is a true and accurate copy of a page from the website Wikipedia.*

50. The St. Petersburg Times recounted the contentious Tarpon Springs hearing the next day, quoting U.S. Representative Bilirakis accusing the Region 4 representatives "'You are wrong as all hell for just wanting to walk out of here after 10 minutes of questions," and quoting community residents who made "mocking sounds of a chicken as another yelled, 'You should be ashamed of yourself.'" *Doc. 2637 is a true and accurate copy of a News Article.*

51. The St. Petersburg Times editorialized on June 8, 2000 that the Agency officials "showed their arrogance by walking out" of the Tarpon Springs meeting three days earlier and appeared "more concerned about the polluter's feelings than the public's." The Tampa Tribune wrote the Agency's decision to walk out "was a poor example of government on any level. It was nothing more than a hit-and-run approach to a matter of great public importance and a disservice to residents.. . . Kaufman did ask some pointed questions at the meeting, but they certainly were not the type that should have prompted an early departure by anyone. He was simply trying to get answers a frustrated public is seeking." *Docs. 96301 and 2639 are true and accurate copies of News Articles.*

52. The Agency's walkout and insensitivity to the Tarpon Springs community outraged U.S. Representatives Bilirakis and Oxley, who on June 9, 2000 jointly responded quickly to the

Agency's disturbing behavior by asking the United States General Accounting Office ("GAO")² to examine the relationship between the Agency and the Ombudsman function.

Doc. 96292 is a true and accurate copy of a letter from a MOC.

53. A June 9, 2000 St. Petersburg Times article described the June 5th meeting on the Stauffer site and quoted U.S. Representative Bilirakis' chief of staff: "The failure of EPA to cooperate with the ombudsman's office is a serious problem." Mr. Kaufman is quoted in the article charging the Agency and the site owner with potential fraud by withholding the information regarding a change in Stauffer's ownership. Kaufman stated that the Agency's apparent attitude was to "spit in Congressman Bilirakis' eyes and leave before Kaufman asks the hard questions." *Doc. 002307 is a true an accurate copy of a News Article.*

54. On June 9, 2000 U.S. Representative Oxley, chairman of the House Subcommittee on Finance and Hazardous Materials, continued his response to the Tarpon Springs walkout by writing to Administrator Browner. He requested a report "on the conduct of Region IV representatives who attended a June 5th town meeting" that was "less than satisfactory. . . and a disservice to the concerned citizens of the community and to my colleague Rep. Michael Bilirakis. . . ." *Doc. 96300 is a true and accurate copy of a letter from a MOC.*

55. On June 12, 2000, U.S. Representative Bilirakis wrote to Administrator Browner complaining about the "blatant disregard for the taxpaying public" shown by Agency personnel at the June 5th National Ombudsman hearing. He escalated his follow-up to the meeting by sending a similar letter to then-Vice President Albert Gore. *Docs. 96294 and 96296 are true and accurate copies of letters from a MOC.*

² Now called the United States Government Accountability Office.

56. On June 14, 2000, a group of 50 organizations wrote a letter to U.S. Representatives Dennis Hastert (R-IL) and Richard Gephardt (D- MO), expressing support for the Allard/Bilirakis bills to strengthen the independence of the National Ombudsman function. On the same day, the Coeur D'Alene Press reported that three U.S. Senators were “appalled” by the Agency officials who “arrogantly walked out” of the Tarpon Springs Ombudsman hearing. That article was distributed within EPA. *Doc. 002540 is a true and accurate copy of a letter sent to several MOC. Doc. 96290 is a true and accurate copy of a News Article.*
57. On June 16, 2000, U.S. Representatives Bilirakis and Oxley continued their follow-up to the Tarpon Springs walkout, jointly writing to the U.S. House of Representatives Commerce Committee Chairman Thomas J. Bliley Jr. requesting hearings to address the question “Is the EPA Responsive to the Concerns of Local Communities.” They asked that the hearing focus on determining if the Agency is “fulfilling its responsibilities in a manner that is consistent with the interests of taxpayers and Congressional intent.” *Doc. 96293 is a true and accurate copy of a letter from several MOC.*
58. At a meeting June 22, 2000, AA Fields informed U.S. Representative Bilirakis that the walkout at the June 5th Stauffer meeting was not Agency policy, and he agreed the Agency would withdraw the amended Tarpon Spring consent decree entirely. *Docs. 000772 and 103415 are true and accurate copies of several EPA DOC.*
59. On July 25, 2000, U.S. Representative Karen Thurman (D-FL) wrote a letter to Administrator Browner expressing her concern about the selected remedy for the Tarpon Springs site, the community's loss of confidence in the Agency, and the need for continuing the National Ombudsman's investigation of the site. *Doc. 103459 is a true and accurate copy of an EPA DOC.*

60. On July 28, 2000 Administrator Browner responded to U.S. Representative Bilirakis' complaint. She apologized that the walkout by Agency employees at Tarpon Springs "was not consistent with our longstanding commitment to both seeking public input and providing public access to Agency information and expertise." *See Doc. 000772.*
61. The Agency employees involved and responsible for the walkout responded to the disastrous public relations and political aftermath by aggressively trying to shift the blame from themselves to Mr. Kaufman. They falsely painted his inquiries into the polluter's change in ownership as a display of "bullying thug-like tactics." In fact, it was Agency representatives who disrupted the hearing when they abruptly announced they would not answer most questions even before they started their presentation. Their disruptive pronouncement preceded any inquiry by Mr. Kaufman into the Agency's actions at the Superfund site. It preceded any questions into their knowledge of the disturbing change in corporate ownership that might cost taxpayers millions of dollars. When Mr. Kaufman did try to raise those questions on behalf of U.S. Representative Bilirakis, the EPA representatives made good on their promise and walked out. *Docs. 96287 and 103477 are true and accurate copies of several EPA DOC.*
62. On August 28, 2000, the EPA withdrew its proposed remedy for the Stauffer site in Tarpon Springs. U.S. Representative Bilirakis later attributed this directly to the "thorough investigation" by the National Ombudsman. *Doc. 002434 is a true and accurate copy of an EPA DOC.*

Continuing Ombudsman Activities 2000

63. On August 8, 2000, at the request of Senator Arlen Specter (R-PA), Mr. Kaufman led an Ombudsman site investigation into the Marjol Battery site in Throop, Pennsylvania. The

National Ombudsman was to investigate whether the Agency's proposed "partial capping" of the site's estimated half million tons of lead-laced soils and battery waste was a remedy that would properly protect the public's safety and health. The remedy addressed issues that are covered under one, if not all, of the Whistleblower Acts. *Docs. 103800 and 90647 are true and accurate copies of several EPA DOC.*

64. On August 15, 2000, AA Fields met with DAA Shapiro and OSWER director of the Superfund program Stephen Luftig regarding the Draft Ombudsman Guidelines. Shortly thereafter, AA Fields announced a decision to forgo enacting the proposed controversial and restrictive Ombudsman guidelines during the public comment period, and delayed their release for comment until a later time. *Doc. 100442 is a true and accurate copy of an EPA calendar entry, and 103193 is a true and accurate copy of an EPA E-mail with an attached true and accurate copy of a News Article.*

65. On August 19, 2000, at the request of Senator Michael Crapo (R-ID), Mr. Kaufman chaired Ombudsman hearings in Coeur D'Alene, Idaho to look into whether the Agency's cleanup of the Bunker Hill Superfund site was sufficient to protect the public's health and safety, and whether the proposed expansion of the Superfund site was proper. Concerns at the Bunker Hill site centered around contamination from pollution from historic metal mining that threatened the public health and drinking water. The site once reported the highest blood level of lead in children in the nation, according to Agency testimony. The hazards at the Coeur D'Alene site addressed issues covered under one, if not all, of the Whistleblower Acts. *Doc. 93705 is a true and accurate transcript of an EPA-sponsored hearing with exhibits.*

66. At the hearings, U.S. Representative Helen Chenoweth-Hage praised National Ombudsman Martin and Mr. Kaufman for "their very keen minds and, more importantly, their willingness

to really dig and reach a solution.” Also, Mr. Kaufman engaged in an exchange with Agency attorneys regarding EPA’s legal authority to set certain geographic boundaries of the Coeur D’Alene site. *See Doc. 93705.*

67. In an August 31, 2000 article in the Coeur D’Alene Press, Mr. Kaufman is quoted applauding AA Fields’ decision to defer the enactment of the Draft Ombudsman guidelines, which he viewed as an attempt to constrain Ombudsman activities. Mr. Kaufman stated his belief that the delay in issuing the guidelines for comment was intentional given the upcoming presidential election. "I think they will read the tea leaves after the election, and then decide if they want to hammer us," Kaufman said. "If Gore wins, they think they may have the support, but I don't agree." *See Doc. 103193.*

68. On September 5, 2000, the Denver Post ran an article on the upcoming U.S. Senate hearings on the National Ombudsman and credited Ombudsman Martin and Mr. Kaufman with causing an “unprecedented reversal” of the Agency’s proposed remedy at the Shattuck Superfund site in 1999. *Doc. 002497 is a true and accurate copy of a News Article.*

69. A September 9, 2000 Denver Post article mentioned Mr. Kaufman’s concern that the Shattuck Chemical Co. performed U.S. Defense Department work involving enriched uranium, which if true would render the EPA remedy for the Shattuck Superfund site improper. *Doc. 002529 is a true and accurate copy of a News Article.*

70. On September 12, 2000, OIG General Counsel Mark Bialek sent Mr. Kaufman’s supervisor a memo outlining why Mr. Kaufman should not have given witnesses at the June 5, 2000 Tarpon Springs hearing an “advise of right” warning. Mr. Kaufman responded in a memo to Mr. Bialek that it was Mr. Bialek who had raised the “advise of right” issue after Mr. Kaufman had come to him for direction, and that Mr. Bialek had indicated Mr. Kaufman

should provide this warning. Mr. Kaufman requested they meet to “get our relationship in the future back on a positive and consistent tack.” He also assured Mr. Bialek he would not provide such a warning again, and did not. *Docs. 001392 is a true and accurate copy of an EPA DOC. See Doc. 001395.*

71. On September 19, 2000, U.S. Senator Crapo notified the Agency in a letter that one of his constituents felt threatened by an EPA Region 10 official as a result of testifying at the August 19, 2000 National Ombudsman hearing in Coeur D’Alene. *Doc. 97047 is a true and accurate copy of an EPA DOC.*
72. On September 26, 2000, the U.S. Senate Committee on the Environment and Public Works held a hearing on U.S. Senator Allard’s ombudsman reauthorization bill. The hearing was his response to the Agency’s withholding of documents, refusal to meet with the public regarding the Shattuck site, and generally the revelations of the Shattuck Ombudsman hearings. *Doc. 001131 is a true and accurate copy of transcripts of a Congressional hearing.*
73. A September 27, 2000 Denver Post article described the Senate hearings and the EPA reversal on the Shattuck Superfund site remedy after the Ombudsman hearing. It quotes Mr. Kaufman criticizing the Draft Ombudsman Guidelines, stating “The system works because the ombudsman's procedures were followed [on Shattuck]. . . The EPA now wants to diminish those procedures.” *Doc. 002527 is a true and accurate copy of a Press Article.*
74. On or about September 29, 2000, Mr. Kaufman’s supervisor DAA Shapiro wrote a memo reprimanding him for statements he made at the June 5, 2000 Tarpon Springs Ombudsman hearing to Agency officials who refused to answer questions. Mr. Shapiro believes this was

the end of this incident and did not find need to reprimand Mr. Kaufman further regarding this incident.

75. On October 3, 2000, the U.S. House Subcommittee on Finance and Hazardous Materials and the Subcommittee on Health and Environment held hearings on U.S. Representative Bilirakis' ombudsman bill and generally on "The Role of the EPA Ombudsman in Addressing Concerns of Local Communities." Hearing Co-Chair Bilirakis opened the hearing lamenting that "Unfortunately, many citizens around the country would contend that EPA has failed in its relationship with local communities" and entered into the record some 20 letters and e-mails from U.S. citizens and community groups around the nation supporting the National Ombudsman. The tone of the hearing was overwhelmingly supportive of the National Ombudsman. *Doc. 001315 is a true and accurate copy of transcripts of a Congressional hearing with exhibits.*

76. OSWER Assistant Administrator Timothy Fields testified at the House hearing that "OSWER has given the National Ombudsman his independence to the maximum extent possible" and that the program is "operating successfully." *Doc. 104218 is a true and accurate copy of EPA testimony.*

77. An October 4, 2000 Denver Post article described the National Ombudsman's "two-man show that upended the EPA's decision to store radioactive waste in a Denver neighborhood," and the resulting Congressional resolve to obtain more independence and more funding for the Ombudsman. *Doc. 002525 is a true and accurate copy of a News Article.*

78. On October 18, 2000 the Agency wrote a letter to U.S. Senator Crapo stating that Mr. Kaufman's performance was satisfactory. *Doc. 002696 is a true and accurate copy of a News Article.*

79. On October 19, 2000, U.S. Senators Specter and Rick Santorum (R-PA) and U.S. Representative Don Sherwood (R-PA) requested that the Ombudsman hold a hearing regarding the Marjol Battery site in Throop, PA to address the Agency's delay in issuing a final remedy, as a follow-up to the Ombudsman's August 8, 2000 investigation. The Superfund site had operated as a battery-crushing and lead processing facility. As a result of those operations, the ground surface of the Marjol Battery site had become polluted with lead, which leaked into the groundwater, soil and air. *Doc. 90646 is a true and accurate copy of a letter from several MOC and produced by the EPA in this proceeding.*
80. On October 24, 2000 U.S. Representative Helen Chenoweth-Hage issued a blistering report titled "Investigative Report Concerning Abuses of Federal Law and Citizens of North Idaho by the United States Environmental Protection Agency," calling Agency actions related to the Coeur D'Alene hazardous waste site "unwarranted, unregulated, and heavy handed." It relied on testimony from the August 19, 2000 Ombudsman hearing chaired by Mr. Kaufman. *Doc. 94358 is a true and accurate copy of a report issued by a MOC.*
81. On November 3, 2000, U.S. Senators Specter and Santorum and U.S. Representative Sherwood wrote a letter to EPA Region 3 addressing the Region's resistance to an Ombudsman investigation of the Marjol Battery Superfund site. *Doc. No. 000776 is a true and accurate copy of a letter from several MOC.*
82. On November 14, 2000, the National Ombudsman held additional hearings on the hazardous waste site in Coeur D'Alene, Idaho, in which U.S. Representative Chenoweth-Hage's report of three weeks earlier was discussed. *Doc. 94497 contains true and accurate copies of EPA testimony and an EPA E-mail.*

83. On November 16, 2000, the Agency wrote U.S. Representative Chenoweth-Hage calling elements of her report “factually in error or a mischaracterization.” *Doc. 94415 is a true and accurate copy of an EPA DOC.*
84. Despite the request of the Pennsylvania Senators and Congressman for an Ombudsman investigation, on December 1, 2000 the Agency announced its final decision on the remedy for the Marjol Battery site. This infuriated U.S. Senators Specter and Santorum and U.S. Representative Sherwood. They questioned the Agency's failure to heed their request for Ombudsman participation, and the fact that the Agency decision “drastically deviated from its proposed remediation plan.” *Doc. 90911 is a true and accurate copy of an EPA DOC comprising a report. See Doc. 90647. Doc. 90538 is a true and accurate copy of a press statement from several MOC.*
85. On December 6, 2000, U.S. Representatives Bilirakis and Oxley wrote to AA Fields asking follow-up questions to the October 23, 2000 House hearings on the National Ombudsman, a hearing spurred by the Agency walkout at the June 5, 2001 Tarpon Springs hearing. *Doc. 61364 is a true and accurate copy of a letter from several MOC.*
86. A December 7, 2000 editorial from the Scranton Times Tribune lambasted the EPA's Marjol Battery remedy, stating the decision that the “site should be capped, rather than fully rehabilitated, leaves a toxic sword swinging over the borough and the region while sparing the site's corporate owner millions of dollars in remediation costs.” With the editorial was a cartoon depicting a person sitting on pile of waste wearing a “dunce” cap labeled “EPA.” *Docs. 000462 and 90539 comprise a true and accurate copy of a News Article and an true and accurate copy of a cartoon appearing in the same newspaper.*

87. The difference in cost between capping and removing the waste from the Marjol site was \$14 million versus \$86 million. *See Doc. 90647.*
88. Within two weeks of the editorial and Congressional criticisms, the Agency suspended the Marjol Battery cleanup plan to allow the Ombudsman review, as originally requested by U.S. Senators Specter and Santorum and U.S. Representative Sherwood. The Agency agreed to further test, for instance, whether the proposed 10 acre-mound would create potential sinkholes that would allow the lead waste to enter the community drinking water. *See Doc. 90911.*
89. For all the time that Mr. Kaufman performed Ombudsman duties for National Ombudsman Martin, Martin found the quality of Mr. Kaufman's work to be exceptional. Mr. Martin was confident, that work furthered the mission of the Agency to protect the nation's communities against environmental hazards.

Outgoing Official Retaliates Against Mr. Kaufman

90. On December 13, 2000, then-Vice President Albert Gore, a Democrat, conceded defeat in the United States Presidential election to George Bush, the Republican candidate.
91. On December 14, 2000, AA Fields, a political appointee who would lose his position with the incoming Bush administration, informed Mr. Kaufman in a memorandum ("Fields Memo") that "you will no longer be assigned Ombudsman-related duties and the reference to such duties will be removed from your position description." *Doc. 500032 is a true and accurate copy of an EPA DOC.*
92. The Agency's primary, if not sole motive in stating its intent to no longer assign Mr. Kaufman Ombudsman duties was to retaliate against Mr. Kaufman for his pattern of protected activity in informing the public, industry, and Congress about the performance of

the Agency in its hazardous waste and disposal functions, and his complaints of retaliation.

The memo cited statements made by Mr. Kaufman in the course of his duties, including at the June 5, 2000 Tarpon Springs hearing. This was Mr. Field's attempt to cover up the true nature of Mr. Field's retaliatory action. His memo was an illegal response to Mr. Kaufman's connection to, *inter alia*, Representative Chenoweth-Hage's blistering report on EPA's Coeur D'Alene response, the anger of the PA Congressional Delegation over the announcement of the Marjol Battery remedy, the continuing political fallout from the Tarpon Springs walkout, and the impact of these events had on Mr. Fields' apparent performance, on the Presidential election, and on contributing to his upcoming departure.

93. National Ombudsman Martin, who assigned Mr. Kaufman at least 95 percent of his assignments at that time, did not receive any official notice of the Fields Memo until more than a month later. *Doc. 500694 is a true and accurate copy of an EPA DOC.*
94. No federal Form-SF-52 (Request for Personnel Action) or Form SF-50 (Notification of Personnel Action) was ever issued changing Mr. Kaufman's position description or reassigning him new duties.
95. The United States Office of Personnel Management publishes a handbook outlining rules for federal employment, which states for all "position changes" or "reassignments" "a Standard Form 52 is required to document the requested action and its approvals, and to prepare the Standard Form 50." Mr. Kaufman was aware of those requirements. *Doc. 002641 is a true and accurate copy of Chapter 14 of a U.S. Office of Personnel Management manual.*
96. Mr. Kaufman expected Mr. Fields to leave OSWER shortly, and out of respect for Mr. Fields, ceased supporting the National Ombudsman knowing he would resume his assignments for Mr. Martin after Mr. Fields left in four weeks and after the holidays. He did

not view the Fields Memo as a permanent prohibition since no where in his memo did Mr. Fields state that he, as a representative of the Agency, was permanently prohibiting Mr. Kaufman from staffing National Ombudsman Martin. Nor did Mr. Kaufman receive a Form SF-50 or SF-52 indicating any change in his responsibilities nor did any appear in his personnel file. His salary was still paid from the Ombudsman allocation.

97. After December 14, 2000, Mr. Kaufman made statements to the press charging that the Fields Memo was issued in retaliation for his Ombudsman investigations that publicly uncovered the Agency's failures to adequately protect the health and safety of local communities. The articles were distributed within EPA. *Docs. 101891 and 100988 contain true and accurate copies of News Articles.*

98. A December 16, 2000 article in the Denver Post quotes Mr. Kaufman saying the Fields Memo was revenge by the Clinton administration for embarrassing the Agency in case after case across the country, and that the Agency has been plotting for some time to eliminate the National Ombudsman. *Doc. 002523 is a true and accurate copy of a News Article.*

99. In a December 18, 2000 letter to AA Fields, U.S. Senator Allard highlighted Mr. Fields' January 1999 promise that he would not take any action to compromise the independence of the National Ombudsman. The Senator wrote that he now "views both the reassignment of Mr. Kaufman and the proposed guidelines as a violation of that personal commitment you made to me and would urge you to reconsider this action." The Senator added that by "virtually eliminating this office, the EPA now sends a message to the American public that it can and will operate in cloaked secrecy and make decisions affecting the health of countless citizens without any accountability." U.S. Senator Crapo wrote a similar letter to

Mr. Fields on this day. *Doc. 103377 is a true and accurate copy of a EPA DOC. See Doc. 500918.*

100. A December 19, 2000 article in the St. Petersburg Times quotes Mr. Kaufman stating that Mr. Field's December 14, 2001 memo was a deliberate effort to interfere with the Ombudsman function. "It's clear what's really going on," Kaufman is quoted saying, "Politics." *Doc. 002304 is a true and accurate copy of a News Report.*
101. On December 19, 2000 the Denver Post ran an article describing U.S. Senator Allard's resolve to establish an independent National Ombudsman office, where he states "It appears to me they've conveniently waited until there's a transition to make their move," and described the alleged reassignment of Mr. Kaufman five days earlier. A December 20, 2000 Denver Post article similarly described the Agency's interference with the National Ombudsman. *Docs. 002521 and 002519 are true and accurate copies of Press Articles.*
102. Also on December 19, 2000, U.S. Senator Specter held a press conference in which he announced the PA Congressional delegation would call for hearings on why Mr. Kaufman was reassigned. *Doc. 100376 is a true and accurate copy of an EPA E-Mail.*
103. At this time, Mr. Kaufman's immediate supervisor, DAA Michael Shapiro, did not prohibit Mr. Kaufman from supporting the National Ombudsman, either orally or in writing, although the Fields Memo instructed Mr. Kaufman that Mr. Shapiro would provide him with alternative assignments. No such assignments were made at this time.
104. On December 20, 2000 a national letter writing campaign was organized to support Mr. Kaufman and the National Ombudsman function. *Doc. 100655 is an e-mail message sent to the EPA that was produced to Mr. Kaufman in this proceeding.*

105. On December 21, 2000, outgoing AA Fields responded to the letters of U.S. Senators Crapo and Allard of December 18, 2000. He stated that Mr. Kaufman is not an EPA investigator but rather a program analyst (his generic title), and that Mr. Fields cannot discuss that "personnel decision" because of limitations contained in the Privacy Act., 5 U.S.C. §552(a). This made a clear and false inference that Mr. Kaufman had failed to perform his Ombudsman duties successfully. *Doc. 500947 is a true and accurate copy of an EPA DOC. See Doc. 103377.*
106. A December 21, 2000 meeting with members of the Bush EPA Transition team including OSWER representatives discussed "potential negative publicity related to the Ombudsman office." *Doc. 103306 is a true and accurate copy of an EPA E-Mail.*
107. On January 3, 2001, the outgoing Browner administration finally placed its Draft Ombudsman Guidelines in the Federal Register for public comment. The Agency stated that and Ombudsman is "expected to act with independence, impartiality and confidentiality-the basic operating principles of all Ombudsmen" and that it drafted the guidelines to reflect "key aspects of various external models in a manner that supports the Ombudsman's independent operation within the context of a civil service position within the Federal government structure." The guidelines would limit public hearings and Ombudsman review of hazardous waste cleanup sites particularly when a consent decree was approved by both Agency and the responsible party. *Doc. 103787 is a true and accurate copy of pages from the Federal Register.*
108. National Ombudsman Martin was not told the guidelines were to be placed in the federal register at that time, nor was he allowed to review them before publication.

109. Numerous members of Congress publicly criticized the Agency on the reassignment of Mr. Kaufman and the publication of the Draft Ombudsman Guidelines as improper interference with the Ombudsman function, including Senators Crapo, Craig, and Allard.
110. Agency employees were intimidated by the discrimination and retaliation suffered by Mr. Kaufman, with one union official writing on January 3, 2001 "If Hugh isn't safe, the rest of us also need to be nervous; Hugh was gold plated safe." *Doc. 102361 is a true and accurate copy of an EPA E-mail.*
111. On January 4, 2001, Mr. Kaufman complained internally that the Draft Ombudsman Guidelines are fundamentally inconsistent with all the minimum Ombudsman guidelines of the American Bar Association, the United States Ombudsman Association, and the Administrative Conference of the United States. Mr. Kaufman was quoted in press reports stating that the Agency's push for the Draft Ombudsman Guidelines was an effort to censure the National Ombudsman's office for essentially doing its job too well. *Doc. 100790 is a true and accurate copy of an EPA DOC.*
112. Also on January 4, 2001, U.S. Senators Allard, Crapo and Craig wrote to the Agency criticizing the Draft Ombudsman Guidelines. A January 5, 2001 Denver Post article describes the Senators' letter, and includes Mr. Kaufman's charges of retaliation against him. Senator Crapo told the Coeur D'Alene Press "it appears the EPA is doing exactly what we were concerned about." *Doc. 002517 is a true and accurate copy of a News Article. Doc. 90389 is a true and accurate copy of and EPA E-Mail with an attached News Article.*
113. On January 5, 2001, in response to the Agency's interference with his duties, National Ombudsman Martin suspended all 20 open Ombudsman investigations due to "reported

recent personnel transfers and pending implementation of EPA Ombudsman Guidelines.”

This is a clear reference to Mr. Kaufman. *Doc. 94476 is a true and accurate copy of an EPA DOC.*

114. The suspension was widely reported in the media. U.S. Senator Allard was quoted in the Washington Times stating “I would hope they would not try and do anything to the ombudsman office with a new administration coming in.” *Doc. 002492 is a true and accurate copy of a News Article. Doc. 102292 is a true and accurate copy of an EPA E-mail with an attached true and accurate copy of a News Article.*
115. On January 8, 2001, the Environmental News Service ran an extensive article on Ombudsman Martin's suspension of the 20 cases, and described Mr. Kaufman's charges of Agency retaliation against him and Mr. Martin by issuing the Fields Memo and by pursuing the Draft Ombudsman Guidelines. The article was distributed through the American Bar Association ombudsman listserv by a co-chairman of its Committee on the Ombudsman. *Doc. 101934 is a true and accurate copy of a News Article. Doc. 101895 is a true and accurate copy of an e-mail produced by the Agency in this proceeding.*

**Incoming Whitman Administration
Learns About Mr. Kaufman's Criticisms**

116. On January 9, 2001, DAA Shapiro e-mailed the prior day's Environmental News Service article to Marcus Peacock, a Bush/Cheney transition team liaison. Shapiro stated that he had written a “brief transition paper on the Ombudsman but I don't think it does the Agency's views justice” as to the heated issues mentioned in the News Service article. *Doc. 101086 is a true and accurate EPA E-mail with an attachment.*

117. In response to DAA Shapiro's e-mail, the next day Mr. Peacock e-mailed DAA Shapiro back requesting further information on the National Ombudsman controversy, specifically at the personal request of incoming Administrator Christine Todd Whitman. *Doc. 100854 is a true and accurate copy of an EPA E-mail and an e-mail sent to an EPA employee and produced by the EPA in this proceeding.*
118. In immediate response to Ms. Whitman's request, that day DAA Shapiro e-mailed Peacock a 2 ½ page summary of the National Ombudsman issue, which stated "because of a recent change in staff supporting the Ombudsman function, some members of Congress and the public have been led to believe OSWER is attempting to weaken or dismantle the Ombudsman function." This is a clear reference to Mr. Kaufman and his protected activities. The memo also states "In the absence of legislation, EPA will have to decide whether we will re-establish a formal Office of Ombudsman, with associated resources and staff supervised by the Ombudsman." *Doc. 100855 is a true and accurate copy of an EPA E-mail with an attachment.*
119. On January 11, 2001, a Milwaukee Journal Sentinel opinion article stated that the claims of Ombudsman Martin and Mr. Kaufman that the EPA was interfering with the Ombudsman function's independence were "credible and worrisome" and urged incoming Administrator Whitman to commit to creating an independent ombudsman office "and to move in quickly to make that commitment a reality." *Doc. 002490 is a true and accurate copy of a News Article.*
120. On January 11, 2001, director of the Superfund program Luftig e-mailed colleagues to coordinate responses to U.S. Representative Bilirakis' December 6, 2000 questions on Ombudsman independence, in a follow-up to the 2000 House hearings on the Ombudsman.

Mr. Luftig complained Mr. Bilirakis' letter reflected the views publicly raised by "Ubergruppenfuher Herr Inquisitor Kaufmann." Mr. Bilirakis initiated the 2000 hearings after the disturbing Tarpon Springs walkout of June 5, 2000 which Mr. Luftig had suggested and encouraged. *Doc. 101758 is a true and accurate copy of an EPA E-mail.*

121. Mr. Luftig further suggests in that e-mail requesting assistance from EPA employee Joe Laforvara, who had been assisting the National Ombudsman on the Stauffer Superfund site at the request of National Ombudsman Martin. Mr. Laforvara does not have Ombudsman duties listed in his position description, as the Agency alleged was now the case for Mr. Kaufman..
122. On January 12, 2001, a group of more than 50 community groups wrote a letter to incoming President George W. Bush asking him to give Ombudsman Martin authority to reinstate Mr. Kaufman, charging that recent actions by Agency managers "demonstrate the lack of discretion and independence allowed that important office." The letter received press coverage. *Doc. 002537 is a true and accurate copy of a letter sent to President Bush. Doc 002488 is a true and accurate copy of a News Article.*
123. On January 14, 2001 U.S. Senators Specter and Santorum and U.S. Representative Sherwood wrote a joint letter to outgoing Administrator Browner regarding Mr. Kaufman, a copy of which was received by incoming Administrator Whitman when she entered office. *Doc. 001728 is a true and accurate copy of interviews conducted by the EPA Office of Inspector General with attachments. See 001790.*
124. On January 14, 2001, an article appeared in the Denver Post highly critical of Mr. Kaufman authored by Al Knight. Regarding the article, an Agency employee wrote in an e-mail to OSWER director of the Superfund program Stephen Luftig "I think we're finally

seeing some results from the information we sent. Delete this.” *Doc. 101763 is a true and accurate copy of an exchange of EPA E-mails with an attached true and accurate copy of a News Article.*

125. On January 16, 2001, Mr. Luftig e-mailed the Al Knight article to many colleagues, and it got wide circulation throughout the Agency. *Docs. 100180, 100182, 100185, 100187, 100190, and 100194 are true and accurate copies of EPA E-mails with attachments.*
126. On January 19, 2001, National Ombudsman Martin responded to a letter from U.S. Senators Specter and Santorum and U.S. Representative Sherwood laying out his resource needs for his Marjol Battery Ombudsman investigation. *Doc. 90584 contains a true and accurate copy of an EPA DOC, and a true and accurate copy of a letter to the EPA from several MOC.*
127. On January 19, 2001, Ombudsman Martin met with his supervisor DAA Shapiro and was officially informed for the first time about the Fields Memo regarding Mr. Kaufman's Ombudsman assignments. At the meeting, Ombudsman Martin agreed to remove the suspension of the 20 Ombudsman cases in return for DAA Shapiro's promise to pursue the creation of an independent National Ombudsman office. *Doc. 101958 is a true and accurate copy of an EPA E-mail with an attached EPA DOC.*
128. DAA Shapiro pursued his January 19, 2001 promise to create a separate “Office of the Ombudsman.” Internal documents outline the intent and structure of the change. Under the proposed reorganization, the National Ombudsman would become a supervisor and “assume responsibility for the direction of the three full time personnel work years allocated to this function.” The change would “reaffirm the autonomy and independence of the Ombudsman, who serves the public in their quest for information and problem-

solving relating to all OSWER programs.” OSWER seeks to “make clear . . . that the Ombudsman, who independently selects those sites and issues on which he elects to work . . . has a degree of independence and autonomy.” The establishment of an “‘Office’ also makes this function more visible to the public it serves.” The mechanisms for recruitment of staff “will be determined by the Director, Office of Ombudsman.” The office would be allocated a \$900,000 budget, a 75% increase over the existing budget. *Doc. 103382 is a true and accurate copy of an EPA DOC.*

129. While this would not bring the Ombudsman function into compliance with standard ombudsman practices of independence, it was a step towards greater independence.
130. On January 19, 2001, incoming Administrator Christine Todd Whitman signed a financial disclosure statement stating she and her husband owned stock in Citigroup valued at between \$100,001 and \$250,000 and owned more than \$15,000 in bonds issued by the Port Authority of New York and New Jersey. On that day, she stated her intention in writing to recuse herself from all matters affecting the Port Authority of New York and New Jersey “to avoid conflict of interest or loss of impartiality,” but did not mention matters affecting Citigroup. *Doc. 000342 is a true and accurate copy of the required financial disclosure statement filed by incoming EPA Administrator Whitman in January 2001. Doc. 001122 is a true and accurate copy of a letter to the EPA.*
131. On January 20, 2001, AA Fields was relieved of his OSWER position. The next day, DAA Shapiro was named acting Assistant Administrator for OSWER (“AAA”) until a permanent appointment could be made. Mr. Shapiro retained his first-line supervisory role with National Ombudsman Martin and Mr. Kaufman. That day, an Agency-wide hiring

freeze became effective. *Doc. 102253 and 101992 contain true and accurate copies of EPA E-Mails.*

132. After Mr. Fields left OSWER, on January 22, 2001 Mr. Kaufman resumed supporting the National Ombudsman on Ombudsman cases, receiving and performing assignments from Mr. Martin and running the day-to-day operations of the office.
133. On January 31, 2001, nine days after he resumed his Ombudsman-related duties, Mr. Kaufman receive a fully Successful performance rating for the prior year with no adverse comments from his supervisor AAA Shapiro. On that same day, Christine Todd Whitman was sworn in as the Bush administration's EPA Administrator. *Doc. 000321 is a true and accurate copy of an EPA DOC representing a performance evaluation.*

**Mr. Kaufman Notifies EPA, Congress and the Press That
Administrator Whitman Has Citigroup Ties**

134. On February 1, 2001, Administrator Whitman signed a memorandum stating she would recuse herself from all matters affecting the ability of the Port Authority of New York and New Jersey to honor its bond obligations, but did not mention matters affecting Citigroup. *Doc. 002627 is a true and accurate copy of an EPA DOC.*
135. In early February, Mr. Kaufman began exploring Administrator Whitman's financial background. He uncovered the fact that Administrator Whitman's family had significant business ties to Citigroup, and owned a large block of Citigroup stock. Mr. Kaufman became concerned that such business interests could compromise EPA's protection of the public health and environment and as a result, for example, the taxpayers might have to shoulder inappropriate costs.

136. Mr. Kaufman learned that Administrator Whitman would be required to resolve such conflicts by recusing herself from participation in Agency matters that would impact or give the appearance of impacting her financial interests. The Shattuck Superfund Site in Denver was owned by Citigroup at the time. Administrator Whitman did not recuse herself from the Shattuck Superfund site in her recusal of February 1, 2001. *Doc. 000068 is a true and accurate copy of a report issued by the EPA Office of Inspector General. See Doc. 000070 and 002627.*
137. In February, 2001 Mr. Kaufman began raising Administrator Whitman's conflict-of-interest concerns within the Agency and with Congress. Mr. Kaufman contacted Denver Post reporter Michael Soraghen about his concerns, and Soraghen began investigating the issue. Mr. Kaufman was told the reporter contacted the office of Administrator Whitman, and persons at a Citigroup-affiliated Company where her husband worked, for comment in February as part of his investigation.
138. On February 1, 2001, U.S. Representative Bilirakis sent to letter to incoming Administrator Whitman criticizing the prior administration's interference with the National Ombudsman and Mr. Kaufman in performing their duties, and for pursuing the Draft Ombudsman Guidelines. He requested a meeting with her. Also on that day, National Ombudsman Martin met with the staff of U.S. Senators Specter and Santorum and of U.S. Representative Sherwood on the Marjol Battery Superfund site, and made clear to them that he needed Mr. Kaufman to proceed with the investigation and confirmation of his authority to control his resources. *Doc. 96938 is a true and accurate copy of a letter from a MOC. Doc. 500002 is a true and accurate copy of an EPA DOC.*

139. On February 11, 2000 the Canton Repository ran a lengthy article outlining the widespread criticism of the Draft Ombudsman Guidelines, which quoted Mr. Kaufman enumerating how the guidelines will constrain Ombudsman activities. The Repository was told by the American Bar Association co-chair of its Ombudsman committee who reviewed the guidelines for the U.S. Ombudsman Association that the guidelines will create loopholes allowing EPA officials to suppress investigations and criticism. *Doc. 61374 is a true and accurate copy of a News Article.*
140. On February 13, 2001, National Ombudsman Martin wrote his supervisor AAA Shapiro stating that he can complete an independent and expedited Marjol Battery investigation within three months if the Agency does not interfere with Mr. Kaufman's performance of Ombudsman duties, and the Agency does not finalize or enforce the Draft Ombudsman Guidelines. A copy of that letter was sent to Administrator Whitman. *See Doc. 500002.*
141. On February 14, 2001, U.S. Senators Specter and Santorum and U.S. Representative Sherwood wrote a letter to Administrator Whitman underlining National Ombudsman Martin's intent to utilize Mr. Kaufman on the Marjol Battery Ombudsman investigation and requested that she ensure Mr. Martin is afforded the opportunity to proceed "without hindrance." *Doc. 500001 is a true and accurate copy of a letter from several MOC.*
142. On February 14, 2001, EPA Acting Region 3 Administrator e-mailed AAA Shapiro that he stood willing to work with Mr. Shapiro "no matter which way you or the Administrator's office decide on handling" the assignment of Mr. Kaufman to the Marjol Battery investigation (emphasis added). *Doc. 90424 is a true and accurate copy of an EPA E-mail.*

143. In February 2001, in reviewing Administrator Whitman's financial interests, Mr. Kaufman discovered that the responsible party in the Marjol Battery case was a Citigroup partner in a business deal in Idaho valued at \$1.8 billion.
144. On February 15, 2001, Administrator Whitman met with U.S. Representative Billy Tauzin (R-LA), Chairman of the House Commerce Committee, and was briefed beforehand that Tauzin "has supported Commerce Committee member Rep. Bilirakis' (R-FL) contention that the OSWER Ombudsman has been undermined by OSWER, and needs to be an independent office in EPA." *Doc. 500044 is a true and accurate copy of an EPA DOC.*
145. In February 2001, Mr. Kaufman spoke with his supervisor AAA Shapiro who told him his fate as Chief Investigator for the National Ombudsman rested with the new Whitman administration. On February 15, 2001, the Scranton Times Tribune reports that Mr. Shapiro "couldn't say" when he would decide whether or not to approve a pending travel request of Mr. Kaufman's to visit the Marjol Battery site and continue the Ombudsman investigation. *Doc. 500692 is a true and accurate copy of a News Article.*
146. On February 19, 2001, the Denver Post ran an article highlighting new concerns that the Shattuck Chemical Co. processed radioactive materials for nuclear weapons facilities, raising the specter that resulting nuclear waste remains on the Shattuck Superfund site and that the more stringent rules governing such waste were not followed in the Agency's original cleanup plan. The article quotes Mr. Kaufman raising these concerns. *Doc. 002514 is a true and accurate copy of a News Article.*

**EPA Chief of Staff McGinnis Meets With Shapiro
Followed By New Retaliation**

147. On February 21, 2001, upon receipt of the February 14, 2001 letter from U.S. Senators Specter and Santorum and U.S. Representative Sherwood on the Marjol Battery Ombudsman investigation, EPA Chief of Staff Eileen McGinnis requested a meeting with Mr. Kaufman's supervisor AAA Shapiro. In response to that request, Mr. Shapiro met with Chief of Staff McGinnis to discuss Mr. Kaufman's whistleblowing activities. *Doc. 500000 is a true and accurate copy of an EPA DOC comprising a fax cover page and attachments.*
148. On that same day, Ombudsman Martin and Mr. Kaufman signed and sent out Interrogatories as part of the Marjol Battery investigation. *Doc. 90530 is a true and accurate copy of an EPA DOC.*
149. After February 21, 2001, Mr. Kaufman noticed a change in the approach his supervisor AAA Shapiro had taken towards his performance of Ombudsman duties. This is because during the former Browner administration, resentment against Mr. Kaufman and efforts to silence him largely revolved around the efforts of OSWER AA Fields and OSWER director of the Superfund program Stephen Luftig. With the new Bush Administration, the goal of eliminating Mr. Kaufman's Ombudsman role and, eventually, eliminating the National Ombudsman function itself, rose to the level of Office of the Administrator.
150. On February 22, 2001, Mr. Shapiro instructed National Ombudsman Martin to prepare a program plan to perform the Marjol Battery investigation that assumed that he will not be able to use Mr. Kaufman's services. Mr. Kaufman viewed the memo as a signal that he might be prohibited in the future from providing support to National Ombudsman Martin

on the Marjol Battery case site. Mr. Shapiro copied Administrator Whitman on the memo. *Doc. 500686 is a true and accurate copy of an EPA DOC.*

151. On February 23, 2001, AAA Shapiro verbally informed Mr. Kaufman that he might be prohibited from helping National Ombudsman Martin in ombudsman cases and operating the day-to-day operations of his office. In that discussion, they agreed that if and when Shapiro put in writing such a prohibition, then and only then would Mr. Kaufman be prohibited. Mr. Shapiro agreed to put that request in writing immediately, but he did not do so. Mr. Kaufman had not nor did he ever receive a Form SF-50 or SF-52 changing his Ombudsman duties.
152. On February 23, 2001, Ombudsman Martin met with U.S. Senator Santorum and U.S. Representative Sherwood in Throop, PA and informed them he would reluctantly go forward with the Marjol Battery investigation without the services of Mr. Kaufman. *See Doc. 90911 at 12.*
153. On February 24, 2001 Jessie L. Burke of Tarpon Springs, Florida hand-wrote a letter to Administrator Whitman warning her that she has “a bureaucracy on your hands that at times does not appear to serve anything but itself” and that Ombudsman Martin and Mr. Kaufman “have distinguished themselves among the grass-roots nationally because of their absolute dedication to the TRUTH” and that they have done was “right and just, and not what was bureaucratically convenient.” *Doc. 61223 is a true and accurate copy of a letter to the EPA produced to Mr. Kaufman in this proceeding.*
154. On February 24, 2001 the Scranton Times ran an article highlighting the controversy surrounding the National Ombudsman at the Marjol Battery site, reporting that the Agency, “Citing privacy rules. . . never explained the reassignment of Mr. Kaufman.” It

quotes U.S. Representative Sherwood stating “we will stay on this thing like white on rice.” *Doc. 500560 is a true and accurate copy of a News Article.*

155. On February 26, 2001, seven members of the Throop, PA City Council and its Mayor wrote to Administrator Whitman requesting that National Ombudsman Martin be able to pursue the Marjol Battery investigation independently, and specifically that “Mr. Kaufman be allowed to resume his role as chief investigator” on the case. The said they had been confident about a remedy for the site after an earlier Ombudsman hearing, “only to have the rug pulled out from under us,” when Mr. Kaufman was just recently removed from the case. *Doc. 500651 is a true and accurate copy of a letter sent to the EPA.*
156. On March 5, 2001, U.S. Senators Specter and Santorum and U.S. Representative Sherwood asked Administrator Whitman in a letter to revise the Draft Ombudsman Guidelines because in their current form they appear to “limit the effectiveness of the National Ombudsman” in a number of areas, including “independently manage available staff and resources,” and generally they “curtail the Ombudsman’s independence and impartiality as pressures and constraints may be applied by those with a vested interest in the outcome of certain cases.” On this same day, Administrator Whitman was personally briefed on the Marjol Battery situation by an Agency Deputy Regional Director, despite her conflict-of-interest. *Doc. 500940 is a true and accurate copy of a letter from several MOC produced by the Agency in this proceeding. See Doc. 001788.*
157. About this time, Denver Post reporter Soraghan contacted the Agency and Administrator Whitman’s husband’s office regarding Ms. Whitman’s relationship with Citigroup and her participation the Shattuck Superfund site. *See Doc. 001776.*

158. Also, on March 5, 2001 National Ombudsman Martin received a voice mail from his supervisor AAA Shapiro informing him that starting March 19, 2001 Barry Stoll, from the Office of Inspector General, was being detailed to assist him on the Marjol Battery site investigation. Mr. Martin was not consulted in the process of choosing Mr. Stoll to assist him and he firmly believed Mr. Kaufman was the most qualified person to provide him Ombudsman support. No other person had ever been unilaterally assigned to staff him. *Doc. 500678 is a true and accurate copy of an EPA DOC.*
159. The Agency's primary, if not sole motive in not assigning Mr. Kaufman and instead unilaterally assigning Barry Stoll to the Marjol Battery Ombudsman investigation, despite Mr. Kaufman's requests and Ombudsman Martin's requests for that assignment, was to retaliate against Mr. Kaufman for his pattern of protected activity informing the public, industry, and Congress of the Agency's performance of its hazardous waste and disposal functions, and for his complaints of retaliation.
160. On March 6, 2001, Administrator Whitman met with U.S. Senators Arlen Specter and Rick Santorum and U.S. Representative Don Sherwood on Capitol Hill and falsely stated that Mr. Kaufman had been prohibited from carrying out his duties because of "confidential" and "privacy act" covered personnel-related offenses on his part. In reporting on that meeting, Agency employee Liz Ferry told the Region 3 EPA Director in an e-mail that Ms. Whitman was "committed to not putting Hugh back." Ms. Ferry's duties included speaking for the Agency and advising the EPA regional director on Marjol Battery. *Doc. 90274 is a true and accurate copy of an EPA E-mail.*
161. On that same day, Mr. Kaufman wrote a memorandum to his supervisor AAA Shapiro reminding him he had not yet received a written prohibition from performing Ombudsman

duties. The memorandum included a simple one-sentence statement Mr. Shapiro could sign that would unequivocally prohibit Mr. Kaufman from supporting the National Ombudsman. Mr. Shapiro did not sign the prohibition statement. *Doc. 500235 is a true and accurate copy of an EPA DOC.*

162. On that same day, Douglas Bell, an EPA Senior Environmental Scientist who was recently detailed to assist National Ombudsman Martin, wrote a memo to AAA Shapiro stating that newly assigned and temporary Acting Deputy Assistant Administrator for OSWER Stephen Luftig could not be his supervisor because it would put Mr. Bell in the position of investigating the performance of his supervisor. Mr. Luftig served as OSWER director of the Superfund program for the prior eight years. Mr. Bell's detail at the GS-13 level was permitted under the existing hiring freeze. *Doc. 90578 is a true and accurate copy of an EPA DOC.*
163. On that same day, U.S. Representative Diana DeGette (D-CO) wrote to Administrator Whitman expressing her concerns with the National Ombudsman's independence, and U.S. Senator Dianne Feinstein (D-CA) wrote to the Agency to elicit a response to a constituent letter supporting Mr. Kaufman's role in Ombudsman investigations. *Doc. 97040 is a true and accurate copy of an EPA DOC listing correspondence to and from MOC that was produced by the Agency in this proceeding. See page 97051.*
164. On March 8, 2001, U.S. Senators Specter and Santorum and U.S. Representative Sherwood wrote to the City Council of Throop concerning their meeting with Administrator Whitman two days earlier, stating that Ms. Whitman had told them she was committed to providing resources to support the Ombudsman investigation of the Marjol

Battery Superfund site. *Doc. 500660 is a true and accurate copy of a letter written by several MOC produced by the Agency in this proceeding.*

165. On March 8, 2001, National Ombudsman Martin informed EPA Inspector General Nikki Tinsley that he would proceed with his Marjol Battery investigation relying upon Barry Stoll if she would answer questions that would establish that Mr. Stoll had no conflicts of interest that would potentially interfere with performance. This was faxed to Administrator Whitman. *Doc. 500322 is a true and accurate copy of an EPA DOC with a fax cover sheet.*
166. On March 9, 2001, Ombudsman Martin wrote a memo to OIG employee Barry Stoll questioning Stoll's reporting to OSWER Director of the Superfund Program Stephen Luftig who is directly involved in the cases that the Ombudsman investigates, creating an improper conflict of interest.

**Denver Post Article Outlines Whitman Conflict of Interest
And Further Retaliation**

167. On March 11, 2001, the Denver Post ran the article being developed by Mike Soraghen outlining Administrator Whitman's conflict-of-interest as it related to the Shattuck Superfund site in Denver, CO, which was owned by Citigroup. Mr. Kaufman was quoted in the Post article raising concerns regarding Administrator Whitman's conflict-of-interest and her possible loss of impartiality in the ongoing negotiations between Citigroup and the EPA on financing the cleanup costs. Mr. Kaufman stated "It is in Citigroup's financial interest to have the National Ombudsman's Office continue to be crippled while they are negotiating this consent agreement. . . ." *Doc. 000443 is a true and accurate copy of a News Article.*

168. Mr. Kaufman's belief that Administrator Whitman had a conflict-of-interest related to the Shattuck Superfund site was reasonable, given her financial disclosure statement and the known ownership of the site by Citigroup.
169. After the Denver Post article appeared, EPA Chief of Staff Eileen McGinnis and Administrator Whitman discussed this issue of a conflict-of-interest regarding Shattuck. Ms. McGinnis informed EPA General Counsel Robert Fabricant that Ms. Whitman's husband owned stock in Citigroup. Mr. Fabricant informed Ms. Whitman not to participate in any meetings related to Shattuck. *See Doc. 000073.*
170. On March 12, 2001, Mr. Kaufman signed and sent out Interrogatories as part of the Shattuck Ombudsman investigation. *Doc. 90617 is a true and accurate copy of an EPA DOC.*
171. On that day, AAA Shapiro received a copy of the Denver Post article of March 11 via the American Bar Association Ombudsman listserv. *Doc. 90299 is a true and accurate copy of an EPA E-Mail and an attachment.*
172. Also on March 12, 2001, the Roman Catholic Bishop of Scranton, PA wrote Administrator Whitman that he "cannot stand by and see our good people threatened" by the "horrendous" situation at the Marjol Battery Superfund site and urged her to reverse the EPA decision to cap the pollutants and instead remove them. *Doc. 001107 is a true and accurate copy of a letter sent to the EPA.*
173. On March 13, 2001, seven members of the Throop, PA City Council and its Mayor wrote to Administrator Whitman to "vehemently protest your appointment of Barry Stoll as an investigator for the Marjol site," and that "your indifference to our recent request to restore Hugh Kaufman to this post is stark testimony of your total disregard for the people of this

community, who have been forced to suffer with the ravages of a toxic lead dump through no fault of their own.” *Doc. 500653 is a true and accurate copy of a letter sent to the EPA that was produced by the Agency in this proceeding.*

174. Also on March 13, 2001 Stephen Luftig, who had been temporarily elevated to Acting Deputy Assistant Administrator for OSWER, wrote Mr. Kaufman a memorandum stating that Mr. Kaufman was not authorized to perform ombudsman-related duties, and accused him of poor performance. Mr. Luftig was not nor ever had been Mr. Kaufman's supervisor or in his chain of command, and he felt great animus towards him. Mr. Kaufman wrote to their supervisor AAA Shapiro, informing him that the Luftig memorandum contained false and misleading information about Mr. Kaufman. At this time Mr. Shapiro had informed Agency local officials in Denver that they need not respond to Shattuck interrogatories signed by Mr. Kaufman. No such directive was made to Region 3 officials in Pennsylvania as to the February 21, 2001 Marjol Battery interrogatories signed by Mr. Kaufman. Mr. Luftig was not reprimanded for his statements. *Doc. 000998 is a true and accurate copy of an EPA DOC.*
175. On March 14, 2001, AAA Shapiro informed Mr. Kaufman by memorandum that he was “not authorized to perform any ombudsman-related work.”
176. Mr. Kaufman responded to the March 14, 2001 memorandum on the same day, informing his supervisor AAA Shapiro that he had just checked his personnel file and found that the reference to ombudsman-related duties had not been removed from his position description, as was the announced intention of the Fields Memo. No authorization to perform ombudsman duties is required, nonetheless. A copy of this memo was received by

Administrator Whitman's office the following day. *Doc. 90597 is a true and accurate copy of an EPA DOC with attachments.*

177. On March 16, 2001, AAA Shapiro wrote a memorandum to Mr. Kaufman stating that he was specifically prohibited from performing any ombudsman-related duties. He was also advised to stop using "the unauthorized and misleading title of 'Senior Engineer/Principal Investigator'" and instead use the generic title "Program Analyst." This is the first such prohibition Mr. Kaufman received in writing at any time from OSWER. *Doc. 90552 is a true and accurate copy of an EPA DOC.*
178. AAA Shapiro typically takes progressive disciplinary action against underperforming employees before taking an adverse action, such as putting them on a performance improvement plan, but no such progressive procedure was followed for Mr. Kaufman.
179. From at least 1998 on, no person in Mr. Kaufman's chain of command ever told Mr. Kaufman verbally or in writing that he needed to strengthen his performance in any area so that he could do a better job.
180. The Agency's primary, if not sole motive in removing Mr. Kaufman's Ombudsman duties was to retaliate against Mr. Kaufman for his pattern of protected activity in informing the public, industry, and Congress of the Agency's performance of its hazardous waste and disposal functions, and his complaints of retaliation. Most immediately, Agency officials were infuriated about the March 11, 2001 Denver Post article charging new Administrator Whitman with a conflict-of-interest that quoted Mr. Kaufman. The March 16, 2001 memorandum was an effort by the Agency to decisively undermine and hinder the National Ombudsman function without expressing a clear intent to do so.

181. The official decision to preclude Mr. Kaufman from performing Ombudsman duties appears to have originated with Administrator Whitman through her Chief of Staff Eileen McGinnis, and not from AAA Shapiro. Ms. Whitman's decision was based on her desire to deny Mr. Kaufman a platform on which to air his public allegations of Ms. Whitman's conflicts of interest with Citigroup, and his criticisms of Agency hazardous waste cleanups, and to eliminate an avenue through which members of Congress and the public could explore environmental concerns.
182. During the almost ten years Mr. Martin served as the National Ombudsman, no other OSWER employee has ever been prohibited from serving on his staff in the manner Mr. Kaufman was in the March 16, 2001 memorandum.
183. Also on March 16, 2001, a briefing paper was being developed on the Shattuck Superfund site to prepare Administrator Whitman for an upcoming visit, despite her conflict of interest with the site owner, Citigroup. *Doc. 002251 is a true and accurate copy of an EPA E-mail.*

National Ombudsman Crippled

184. Upon receiving the March 16, 2001 memorandum, Mr. Kaufman contacted members of Congress, the key constituency and complainants to the National Ombudsman office, to inform them that he had been so prohibited. Various members expressed their concerns to the Agency and Administrator Whitman herself both in writing and orally.
185. After March 16, 2001, the now crippled National Ombudsman function was severely curtailed in its ability to perform its duties.

186. On March 19, 2001, the detail of Barry Stoll to assist National Ombudsman Martin began, but Mr. Martin, not having been provided information on Mr. Stoll's potential conflicts by either Mr. Stoll or the OIG, did not meet with him.
187. On March 21, 2001, Mr. Kaufman outlined in a memo to his supervisor AAA Shapiro a range of the Agency's false allegations and retaliation against him, and underlined that his preclusion from Ombudsman duties was also not effective because no SF-52 form was generated in removing virtually all of his duties. Mr. Kaufman further informed Shapiro that Administrator Whitman had a conflict-of-interest at the Marjol Battery site in Pennsylvania because the site owner had a close relationship with Citigroup. In addition, he reported new information regarding Barry Stoll, who had been unilaterally detailed to National Ombudsman Martin to perform investigatory duties. Mr. Kaufman wrote that he had discovered Mr. Stoll's wife at that time was a Division Director for the Agency Enforcement Division and had been involved in and responsible for Superfund and RCRA cleanup activities. This created an improper conflict-of-interest in that Mr. Stoll might be investigating actions of his wife pursuant to his Ombudsman detail. Mr. Kaufman wrote that he plans to file a whistleblower complaint with the U.S. Department of Labor, an internal grievance, and a criminal referral regarding Mr. Stoll's unilateral detail to National Ombudsman Martin regarding these matters. *Doc. 90547 is a true and accurate copy of an EPA DOC without the attachments.*
188. On March 21, 2001, National Ombudsman Martin was informed that several new full time positions to staff him had just been excepted from the Agency-wide hiring freeze imposed at the start of the Bush administration. He was encouraged to seek eligible candidates, the

clear implication being that Mr. Kaufman was not eligible for the positions. *Doc. 000963 is a true and accurate copy of an EPA E-Mail.*

189. The Agency's primary, if not sole motive in denying the assignment of Mr. Kaufman to the newly vacant staff Ombudsman positions upon the selective removal of the hiring freeze, despite the requests of Mr. Kaufman and Ombudsman Martin for him to perform such duties, was to retaliate against Mr. Kaufman for his pattern of protected activity in informing the public, industry, and Congress of Agency's performance of its hazardous waste and disposal functions, and his complaints of retaliation. This denial continued repeatedly through January 12, 2002 with the staff positions remaining open through this period.
190. On March 22, 2001, Administrator Whitman was in Denver, Colorado touring the Shattuck site, and told the Rocky Mountain News when asked about Mr. Kaufman that "I know the controversy, but I haven't met him." *Doc. 500666 is a true and accurate copy of a News Article.*
191. On March 23, 2001, U.S. Senators Crapo, Craig and Allard introduced S. 606, a comprehensive Senate bill to create an independent Agency Ombudsman office with a separate independent budget and hiring authority. *Doc. 002698 is a true and accurate copy of a Bill.*
192. On March 26, 2001, Assistant Inspector General Gary Johnson e-mailed AAA Shapiro describing problems in Barry Stoll's detail to National Ombudsman Martin and specifically Mr. Martin's questions regarding Stoll's background and potential conflicts-of-interest. Mr. Johnson concluded Stoll's detail to assist on the Marjol Battery

investigation “should be terminated.” AAA Shapiro terminated the detail. *Doc. 90568 is a true and accurate copy of an EPA E-mail.*

193. On March 28, 2001, Administrator Whitman went to Capitol Hill to discuss Ombudsman issues with Republican U.S. Representatives Bilirakis, Chairman Tauzin, and Chairman Gillmor. At that meeting, Administrator Whitman told the members that Mr. Kaufman was precluded from performing Ombudsman duties because of performance matters but she could not discuss them because of the Privacy Act protections. This false and demeaning statement is consistent with those the Agency made to other elected representatives and the press throughout 2001. *Doc. 500052 is a true and accurate copy of an EPA DOC showing a calendar entry.*
194. Also on that day, U.S. Representative Bilirakis wrote a memo to Administrator Whitman, criticizing the December 14, 2000 Fields Memo to Mr. Kaufman. In the memo, he states that despite bipartisan Congressional support and citizen praise for the National Ombudsman, “EPA officials started a process of what appears to be retribution against the National Ombudsman and his staff.” The Congressman urged Administrator Whitman to take steps to strengthen the office, and expressed his intent to reintroduce his bill to create an independent Ombudsman office. *Doc. 001106 is a true and accurate copy of a memo sent to EPA from a MOC.*
195. Also on March 28, 2001, seven members of the Throop, PA City Counsel and its Mayor wrote to U.S. Senators Specter and Santorum and U.S. Representative Sherwood asserting that Administrator Whitman had not yet responded to their two prior letters and charging that for over a decade their community had been lied to about the hazardous Marjol “dump.” The local officials wrote to the Congressmen that only until they “became aware

of National Ombudsman Martin and his Chief Investigator, Hugh Kaufman, and with your help, the door finally opened to the truth,” that “apparently we are not the only community whose public officials are being misled by EPA’s Administrator Whitman.” They urged their support for Congressional bills to create an independent Ombudsman office, and expressed their concern about “The recently revealed information about Administrator Christine Whitman's potential for conflict of interest, due to her husband's involvement in Citigroup.” *Doc. 500646 is a true and accurate copy of a letter to several MOC produced by the Agency in this proceeding, without attachments.*

196. On or about March 29, 2001 Pennsylvania State Senator Gaynor Cawley (D-Scranton) wrote to President George Bush saying the EPA was putting “cost over lives” at the Marjol Battery Superfund site, and urged the President to cause EPA to reverse the planned remedy to cap the 10-acre toxic site and to reassign Mr. Kaufman to the National Ombudsman’s staff. *Doc. 90330 is a true and accurate copy of a News Article.*
197. On March 29, 2001 Mr. Kaufman officially waived confidentiality protections associated with his personnel files as they relate to members of Congress. *Doc. HK Exhibit 29 is a copy of an EPA DOC that was produced during EPA’s deposition of Mr. Kaufman.*
198. On March 30, 2001, U.S. Senator Bob Smith (R-NH), Chairman of the U.S. Senate Environment and Public Works Committee, wrote to Administrator Whitman to request the personnel file of Mr. Kaufman. *Doc. 92180 is a true and accurate copy of a letter from a MOC that was produced by the Agency in this proceeding.*
199. On April 3, 2001, Mr. Kaufman filed a complaint with the United States Department of Labor under various environmental whistleblower statutes charging discrimination and retaliation on the part of EPA against him because of his protected activities.

Rep. Bilirakis Reintroduces Bill to Create An Independent Ombudsman Office

200. On April 4, 2001, U.S. Representative Bilirakis introduced a bill in the U.S. House of Representatives to create an independent Agency National Ombudsman. It would create an independent budget with an initial \$2 million appropriation to be increased over time, allow the Ombudsman to make his own independent personnel decisions, and to report directly to the Agency Administrator, an acceptable structure under ombudsman practices. The Congressman also wrote a letter to Administrator Whitman thanking her for her stated support for an independent National Ombudsman, and asked her to review Mr. Kaufman's status. *Doc. 2706 is a true and accurate copy of a Bill.*
201. On April 6, 2001, U.S. Senators Crapo and Allard wrote to Administrator Whitman requesting that she defer enacting the Draft Ombudsman Guidelines. *See Doc. 97047.*
202. On April 6, 2001 AAA Shapiro again encouraged National Ombudsman Martin in a memorandum to actively recruit for the vacant staff positions excluded from the hiring freeze several weeks earlier, because "you are the best judge of what resources you need to fulfill your Ombudsman responsibilities." Though Mr. Martin had requested that Mr. Kaufman be assigned to assist him because he is the most qualified, Mr. Shapiro's memo clearly indicated Mr. Martin was to seek other candidates and exclude Mr. Kaufman from consideration. *Doc. 000961 is a true and accurate copy of an EPA DOC.*
203. The Agency's primary, if not sole motive in denying assignment of Mr. Kaufman to the newly vacant staff Ombudsman position upon the removal of the hiring freeze, despite the requests of Mr. Kaufman and Ombudsman Martin for him to perform such duties, was to retaliate against Mr. Kaufman for his pattern of protected activity in informing the public,

industry, and Congress of Agency's performance of its hazardous waste and disposal functions, and his complaints of retaliation.

204. On April 8, 2001, the Scranton Times ran an article citing conflict-of-interest concerns regarding Administrator Whitman and the Marjol Battery site in Throop, PA, which was owned at the time by Gould Electronics, Inc. Mr. Kaufman's discovery of the conflict had spurred the Times reporter to write the article. At that time, Gould Electronics, Inc. was 80 percent owned by Citigroup, which, as Mr. Kaufman had disclosed to the Denver Post for its March 11, 2001 article, was a company in which Administrator Whitman held shares, and to which her husband had close ties. *Doc 000317 is a true and accurate copy of a News Article.*
205. On April 9, 2001, the Associated Press and the Denver Post ran separate articles on Mr. Kaufman's whistleblower complaint, in which he is quoted accusing Administrator Whitman of retaliating against him. He told the Post "she's made it personal, she's going after me personally." *Doc. 000979 and 500077 are true and accurate News Articles.*
206. On April 11, 2001 National Ombudsman Martin complained in a memorandum to his supervisor AAA Shapiro that he was the only program manager in the EPA who could not supervise personnel, and requested that Mr. Kaufman be placed in his prior support position as Chief Investigator to the Ombudsman and increase his pay from a GS-14 to a GS-15 compensation level. *Doc. 500270 is a true and accurate copy of an EPA DOC.*
207. On April 14, 2001, Idaho State Representative Mary Lou Shepherd wrote to Administrator Whitman urging her to drop the Draft Ombudsman Guidelines, administratively adopt U.S. Senator Allard's Ombudsman bill creating an independent Ombudsman office, so as to

- avoid its “veiled attempt to muzzle the OSWER Ombudsman.” *Doc. 500408 is a true and accurate copy of a letter to the EPA that was produced by the Agency in this proceeding.*
208. On April 16, 2001, AAA Shapiro denied Ombudsman Martin’s request to reassign Mr. Kaufman to Ombudsman duties, stating that a different procedure is necessary to promote an employee from a GS-14 to a GS-15 level, and that further, Mr. Kaufman is precluded from performing Ombudsman duties. *Doc. 501130 is a true and accurate copy of an EPA DOC.*
209. The Agency’s primary, if not sole motive in denying assigning Mr. Kaufman to a GS-15 level Ombudsman position, despite the requests of Mr. Kaufman and Ombudsman Martin for him to perform such duties, was to retaliate against Mr. Kaufman for his pattern of protected activity in informing the public, industry, and Congress of the Agency’s performance in its hazardous waste and disposal functions, and his complaints of retaliation.
210. Mr. Kaufman made clear to Ombudsman Martin that he sought one of the available staff positions, and Martin believed at that time that Mr. Kaufman was the most qualified person to assist him as his Chief Investigator.
211. On April 19, 2001, Ombudsman Martin again requested in a memorandum to his supervisor AAA Shapiro that Mr. Kaufman be reassigned to serve as his Chief Investigator to the National Ombudsman, this time at Mr. Kaufman’s then-current GS-14 compensation level. This document was read by Administrator Whitman. *Doc. 500265 is a true and accurate copy of an EPA DOC with a fax cover sheet.*
212. On April 24, 2001 an aide to U.S. Representative Sherwood told an EPA Region 3 Congressional liaison he anticipated Administrator Whitman “will say no way! to a request

for Kaufman's return" in an upcoming meeting with Throop, PA citizens in Washington, DC. Representative Sherwood had previously attended the March 6, 2001 meeting in which Administrator Whitman said Mr. Kaufman was prohibited from carrying out his duties because of "confidential" and "privacy act" covered personnel-related offenses. The Administrator later cancelled the meeting with the Throop citizens. *Doc. 90296 is a true and accurate copy of an EPA E-mail.*

213. On April 25, 2001, Mr. Kaufman spoke with U.S. Department of Labor investigators who informed him that EPA had refused alternative dispute resolution to address his whistleblower claims. Mr. Kaufman had been willing to pursue ADR. *Doc. 001640 is a true and accurate copy of an EPA DOC.*

214. On April 26, 2001, Administrator Whitman traveled to the Marjol Battery site and was briefed on the status of the cleanup, despite her known conflict-of-interest. *See Doc. 001790.*

215. On April 30, 2001, AAA Shapiro wrote to Throop, PA officials that "Mr. Kaufman is prohibited from performing any Ombudsman related duties ... due to personnel-related concerns" and that Privacy Act concerns preclude him from discussing the details, absent a waiver from Mr. Kaufman or a request from a Congressional Committee chairperson. Mr. Shapiro denied their request that Mr. Kaufman be permitted to resume his work supporting the National Ombudsman at the Marjol Battery site. *Doc. 500251 is a true and accurate copy of an EPA DOC.*

216. On April 30, 2001 and May 2, 2001, Mr. Kaufman filed two complaints with OSHA that were similar to the April 3, 2001 complaint, but included a claim under the ERA, and

added the adverse action taken on April 6, 2001 prohibiting Mr. Kaufman from applying for a new staff position with the OSWER National Ombudsman office.

217. On April 13, 2001, Mr. Kaufman filed a grievance with Administrator Whitman regarding the March 16, 2001 preclusion of his duties, and on April 30, 2001 regarding her “badmouthing” him to members of Congress. She did not personally respond as the collective bargaining agreement procedures require. Rather, she diverted the grievances to unauthorized subordinates to handle, effectively eviscerating Mr. Kaufman’s rights under the applicable collective bargaining agreement. *Docs. 104501, 500223, and 500216 are true and accurate copies of several EPA DOC.*
218. In a May 4, 2001 memorandum to his supervisor AAA Shapiro, National Ombudsman Martin commented on factual errors in Mr. Shapiro’s letter to the Throop, PA officials, and wrote that “Mr. Kaufman is uniquely qualified, indispensable, and irreplaceable for National Ombudsman investigations.” He added that Mr. Kaufman’s personnel file contains no records that support his prohibition from Ombudsman work. Mr. Martin requested that Mr. Shapiro “take affirmative action to stop the ongoing hindering and impeding of my independent Ombudsman investigations, including the Marjol Battery case.” It was faxed to Administrator Whitman. *Doc. 500245 is a true and accurate copy of an EPA DOC without attachments.*
219. Sometime before May 8, 2001, the American Bar Association Sections on Administrative Law and Regulatory Practice and Dispute Resolution provided their comments on the Draft Ombudsman Guidelines. They found the guidelines would improperly establish “several situations in which the [Associate Administrator of OSWER] appears to exercise

- control over the National Ombudsman” such as a requirement he consult with the AA before convening hearings. *Doc. 96880 is a true and accurate copy of a memo to the EPA.*
220. In a May 15, 2001 letter to U.S. Senators Specter, Administrator Whitman revealed that the Agency had decided to defer implementation of the controversial Draft Ombudsman Guidelines until GAO had completed its analysis of the relationship between the Agency and the National Ombudsman function. This study had been spurred by U.S. Representative Bilirakis’ and Oxley’s outrage over the walkout of Agency employees from the June 5, 2000 Tarpon Springs Ombudsman hearing. In her letter Ms. Whitman reiterates Mr. Kaufman’s “unavailability” for Ombudsman work. *Doc. 97075 is a true and accurate copy of an EPA DOC.*
221. On this same day, Mr. Kaufman provided a list of the 20 open Ombudsman cases to U.S. Senator Specter upon his request. *Doc. 000464 is a true and accurate copy of an EPA DOC.*
222. A May 17, 2001 Wall Street Journal article describes Administrator Whitman’s decision to defer implementation of the Draft Ombudsman Guidelines, describes Mr. Kaufman’s whistleblower actions, and quotes Ombudsman Martin stating “what has been done to me has had a crippling effect on my investigations.” The article was distributed through the U.S. Ombudsman Association listserv. *Doc. 96572 is a true and accurate copy of a News Article.*
223. On May 22, 2001, AAA Shapiro denied Ombudsman Martin’s April 19, 2001 request to assign Mr. Kaufman to a GS-14 level staff position to perform Ombudsman duties. *Doc. 500743 is a true and accurate copy of an EPA DOC.*

224. The Agency's primary, if not sole, motive in denying the assignment of Mr. Kaufman to the GS-14-level Ombudsman duties, despite the requests of Mr. Kaufman, National Ombudsman Martin and elected officials for him to perform such duties, was to retaliate against Mr. Kaufman for his pattern of protected activity in informing the public, industry, and Congress of the Agency's performance of its hazardous waste and disposal functions, and his complaints of retaliation.
225. On June 4, 2001, AAA Shapiro gave Mr. Kaufman his first non-Ombudsman assignment since the December 14, 2000 Fields Memo stating he would be given alternative assignments. *Doc. 500776 is a true and accurate copy of an EPA DOC.*
226. On June 15, 2001, Administrator Whitman responded to U.S. Representative Bilirakis' letter of April 4, 2001 asking her to review Mr. Kaufman's status. She wrote a three sentence response affirming her support for "public town meetings to discuss the cleanup of the Stauffer Superfund site" with no mention of Mr. Kaufman. *Doc. 96874 is a true and accurate copy of an EPA DOC.*
227. In the summer of 2001, the Agency held the first of three in a series of meetings to discuss a permanent solution to the National Ombudsman issue. The Agency considered several options, including AAA Shapiro's January 19, 2001 proposal that he had promised National Ombudsman Martin he would pursue on to create an "Office of the Ombudsman," the Ombudsman bills in Congress to create a separate independent Ombudsman office, and a proposal to transfer the National Ombudsman to the OIG ("Transfer"). Attendees included DAA Shapiro and the EPA Deputy Administrator Linda Fisher, who chaired the meeting.

Members of Congress Disturbed by EPA's Treatment of Mr. Kaufman

228. On June 26, 2001, Mr. Kaufman again waived his privacy rights so that U.S. Senator Specter could review his personnel file to determine if it contained evidence of Mr. Kaufman's underperformance, as alleged by Administrator Whitman publicly and in her private March 6, 2001 meeting with Senators Specter and Santorum and U.S. Representative Sherwood. *Doc. 001636 is a true and accurate copy of an EPA DOC.*
229. On June 27, 2001, Marianne Horinko was appointed Agency Assistant Administrator for OSWER, and Shapiro went back to his Deputy Assistant Administrator status, as a subordinate to Ms. Horinko.
230. A June 28, 2001 Denver Post article described secret meetings between the Agency, Shattuck Chemical and Shattuck's owner Citigroup concerning allocation of the cost of the Shattuck cleanup, and new concerns that arose in the south Denver community that the meetings will mirror the improper secret meetings occurring nine years earlier. Those earlier meetings had been revealed in the Shattuck Ombudsman hearings, and resulted in a proposed remedy approved by the Agency that risked leakage of radioactive waste into the local groundwater in as little as five years from implementation. *Doc. 001635 is a true and accurate copy of an EPA DOC.*
231. On July 18, 2001, Administrator Whitman had a luncheon meeting with four U.S. Senators, including U.S. Senator Specter. As was true for her March Congressional meeting, Ms. Whitman was again briefed beforehand on the charges that the Agency was obstructing National Ombudsman Martin from performing his duties and that Mr. Martin wanted Mr. Kaufman rather than any other staff assigned to assist him with the Marjol

Battery Ombudsman investigation. *Doc. 500054 is a true and accurate copy of an EPA DOC showing a calendar entry.*

232. On that same date, U.S. Senators Specter and Santorum and U.S. Representative Sherwood wrote Administrator Whitman that “due to a denial of personnel decision-making powers, the Office of the National Ombudsman has been unable to perform his duties” related to sites around the country, and that their staff reviewed Mr. Kaufman’s personnel file and found nothing in it that precludes him from performing Ombudsman duties. They did not find a Form SF-50 or SF-52 changing Mr. Kaufman’s prior duties. They therefore requested that Whitman give National Ombudsman Martin authority to make personnel decisions. *Doc. 96888 is a true and accurate copy of a letter to the EPA from several MOC that was produced by the Agency in this proceeding.*
233. On August 20, 2001, Administrator Whitman responded to the July 18, 2001 letter, telling the PA Delegation that the National Ombudsman can, at any time, request the recruitment of additional staff persons, and that she was waiting for the GAO report on the Ombudsman to be released before she determines how to “strengthen” the Ombudsman function. *Doc. 96881 is a true and accurate copy of an EPA DOC.*
234. On September 10, 2001, U.S. Representative Dingell (D-MI), the ranking member of the House Committee on Commerce, and U.S. Representative Frank Pallone, Jr. (D-NJ), the ranking member of the House Subcommittee on Environment and Hazardous Materials wrote to Administrator Whitman about scheduled hearings four days later on the National Ombudsman, and requested documents, a number of which directly address Mr. Kaufman’s preclusion of Ombudsman duties and his whistleblower complaints. *Doc.*

500604 is a true and accurate copy of a letter to the EPA from MOC produced by the Agency in this proceeding.

235. On September 11, 2001, terrorists attacked the World Trade Center in New York City and the Pentagon in Arlington, VA. The House Subcommittee on Environment and Hazardous Materials postponed its scheduled hearings on the National Ombudsman.
236. On September 13, 2001, U.S. Representative Bilirakis wrote to Administrator Whitman asking that she permit Mr. Kaufman to assist Ombudsman Martin in his investigative duties, noting that his constituents “have come to respect and admire the investigative skills and knowledge of the salient issues which Mr. Kaufman possesses,” and that his absence at the upcoming Tarpon Springs Ombudsman meeting will not go unnoticed by the local community, “who have come to expect the high quality of investigative work that has characterized the three previous Ombudsman town hearings” and Mr. Kaufman’s absence will “reinforce their distrust of government officials entrusted with protecting their health and safety.” *Doc. 96894 is a true and accurate copy of a letter to the EPA from a MOC.*
237. On September 14, 2001, the GAO released the report on the National Ombudsman that had been spurred by U.S. Representative Bilirakis’ outrage at the walkout from the June 5, 2000 Tarpon Springs meeting. GAO concluded that (a) the National Ombudsman lacked appropriate independence from the Agency he investigated, (b) the adequacy of his resources was in question, and (c) the Draft Ombudsman Guidelines do not adequately address these concerns. GAO suggested that the Ombudsman produce an annual report. *Doc. 000029 is a true and accurate copy of a report from the U.S. General Accounting Office.*

238. Numerous news articles appeared reporting on the GAO report, with several quoting Mr. Kaufman. *Doc. 002481 and 002484 are true and accurate copies of News Articles.*

Decision to Eliminate the National Ombudsman Function

239. On October 2, 2001, Ombudsman Martin wrote a memo to Administrator Whitman entitled "Recommendations to Address Insufficient National Ombudsman Independence." He recommended that the Agency withdraw the Draft Ombudsman Guidelines, that the National Ombudsman report directly to the Administrator and not to the OIG, and that it operate with a separate office and budget, with appropriate office support, and with hiring and supervisory authority, and at a location other than any Agency office. Mr. Martin cited the GAO report findings and the strong Congressional support for an independent Ombudsman office. *Doc. 002546 is a true and accurate copy of an EPA DOC.*
240. Also on October 2, 2001, the Agency held its second of three internal meeting on National Ombudsman controversy. Participants included AA Horinko and Agency Inspector General Nikki Tinsley. Mr. Kaufman's role was specifically discussed at this meeting by Ms. Horinko and Ms. Tinsley in the context of a Transfer of the National Ombudsman to the OIG.
241. The Agency chose to pursue the Transfer rather than create a separate independent Ombudsman office as promised to National Ombudsman Martin and as outlined in the bills in Congress. It chose this option so as to totally eliminate the accountability and transparency evident in the prior n investigations pursued by National Ombudsman Martin and Mr. Kaufman. While there was tremendous pressure from Congress to create an independent office, the Agency ultimately decided to merge it into the OIG function and to

give ultimate budget, hiring, and investigatory authority to the Inspector General rather than its so-called "Ombudsman."

242. From this point forward, the Agency began a vigorous campaign to convince Congress, the press, and the public that it was pursuing the recommendations of the GAO report and Mr. Martin to create an independent National Ombudsman function. The Transfer proved to be an explosive issue for the Agency. While this public relations campaign failed, the Agency ultimately achieved its goal – silencing Mr. Kaufman and National Ombudsman Martin, and eliminating the Ombudsman's accountability function that had been faithfully serving Congress and America's communities.
243. Later the week of October 2nd, AA Horinko made a "courtesy visit" to Capitol Hill as part of an effort to convince members of Congress that, in her words, the Agency wanted a "healthy, credible, and independent" Ombudsman function. Tellingly, Ms. Horinko "did not go into specifics." Apparently she made some headway assuaging the concerns of U.S. Senator Crapo, who indicated he might "pull his legislation to give our new plan some time to be implemented and evaluated," she reported to Inspector General Nikki Tinsley in an e-mail. A "strong congressional outreach is essential to make this thing work," Ms. Horinko added. *Doc. 93198 is a true and accurate copy of an EPA E-mail.*
244. The Agency designed the Transfer to create an "Ombudsman" function at the OIG under a newly-created "Office of Congressional and Public Liaison." It would be headed by a new Assistant Inspector General position. This is unlike most other federal ombudsman, who report to the highest levels of the agency, as was recommended by National Ombudsman Martin in his October 2nd memo to Administrator Whitman. *See Doc. 000042.*

245. Within the new Office of Congressional and Public Liaison, the Congressional and Media Relations function would operate separately from the “Ombudsman” function. The “Ombudsman” function itself would initially comprise an “Ombudsman” position, a temporary detailed employee, an administrative support position, a vacant grade GS-13 position, and a hotline staff position. It would be funded at the \$750,000 level for FY 2003, an increase of 45% above the FY 2001 allocation, and 250% over the FY 2000 allocation. The new Assistant Inspector General position would temporarily be filled by Assistant Inspector General for Human Capital Gary L. Johnson. *Docs. 88434 and 88326 are true and accurate copies of EPA E-mails with attachments.*
246. The OIG “Ombudsman” would not contain any employment position that had a first –line or second-line supervisor who was a Presidential appointee. In contrast, the OSWER National Ombudsman’s second-line supervisor was a Presidential appointee. This was one of many indications that the Transfer was a significant diminution of stature for the position.
247. Contrary to the GAO recommendations, and the Ombudsman Committee of the American Bar Association and U.S. Ombudsman Association best practices, the transferred “Ombudsman” would lack an independent budget and hiring authority. Contrary to the OSWER National Ombudsman’s normal practices, the new position would not even be permitted to independently choose cases to investigate, convene independent hearings, disseminate information, or speak to the press or Congress without prior authorization.
248. Roughly 90 percent of the National Ombudsman duties were programmatic in nature. However, the Inspector General Act, as amended, prohibits the Agency from transferring any programmatic function to the OIG, pursuant to 5 U.S. C Appx. 3 §9(a)(2). By statute,

the Inspector General's function is categorized as law enforcement, requires secrecy, and identifies waste, fraud, and abuse. The OSWER National Ombudsman function was programmatic, informational, and transparent to the public, industry, and Congress designed to address program concerns.

249. Because the OIG cannot perform the National Ombudsman's programmatic functions, the Transfer would decisively eliminate the National Ombudsman function. This was the Agency's intent.
250. On October 3, 2001, OSWER informed OIG that Laurie May, its director of organizational management and integrity staff, would lead its development of the plan for the Transfer. Four days later OIG informed OSWER that Rick Linthurst, Ph.D., Inspector General Senior Science Advisor, would be its contact regarding the Transfer. *Doc. 93198 is a true and accurate copy of an EPA E-mail.*
251. On October 7, 2001, after Agency AA for OSWER Horinko thanked her for following up on their earlier meeting on the Transfer, Inspector General Tinsley responded to her in an e-mail "I hesitate to say "you're welcome," indicating her reluctance to enter this controversy. *See Doc. 93198.*
252. On October 10, 2001, National Ombudsman Martin released his preliminary report on the Marjol Battery site. He recommended continued suspension of the December 2000 remedy to partially cap the half million tons of lead-laced soils at the site, further evaluation of specific potential hazards to the community, and making a determination of whether the cleanup should proceed under RCRA or CERCLA. *Doc. 90940 is a true and accurate copy of an EPA DOC.*

253. On October 23, 2001, in response to Ombudsman Martin's preliminary Marjol Battery report, EPA Region 3 recommended that the Agency headquarters "stop hindering the Ombudsman investigation." The Marjol Battery site is located in Region 3. *Doc. 90928 is a true and accurate copy of an EPA DOC.*

**Targeting Mr. Kaufman And The
Public Relations Campaign**

254. On October 23, 2001, OIG Transfer contact Linthurst wrote in an e-mail that EPA Deputy Administrator Fisher and Inspector General Tinsley "need to finalize the personnel arrangements (SES, detailees, future needs after evaluation)," evidence of Administrator Whitman's continued participation in the Transfer through Ms. Fisher. *Doc. 88694 is a true and accurate copy of an EPA E-Mail.*

255. In an October 25, 2001 e-mail to OSWER Transfer Contact May, OIG Contact Linthurst observed that regarding the Transfer, "There remains concern over the merger of the work into our office such that the program would lose visibility – That is, in fact, the intent on our part; in maybe 2 years. . . ." This is an admission of the Agency's true motive for the Transfer: elimination of the National Ombudsman. *Doc. 89353 is a true and accurate copy of an EPA E-Mail.*

256. In another e-mail later the same day, OIG spokesperson McMahon alerted Mr. Linthurst about the high-profile nature of the Transfer. She wrote to him "haven't you been listening to me..... this will be BY FAR, this [sic] highest profile issue we have been involved in (since I've been here anyway). It will be Libby times 5." Libby, Montana is the location of a nationally prominent Superfund site that garnered significant press coverage. *Doc. 88610 is a true and accurate copy of an EPA E-Mail.*

257. Thirty minutes later, Ms. McMahon further e-mailed Mr. Linthurst warning that “the ‘providing information’ – i.e. community dialogue responsibility isn’t going to be something we can gloss over,” referring to the National Ombudsman’s programmatic function that will be eliminated with the Transfer. The “Members of Congress who are engaged in this issue see that as a critical element of the function. I don’t know where it’ll end up, but think we need to be prepared for that.” *Doc. 88529 is a true and accurate copy of an EPA E-Mail.*
258. Four minutes later, Mr. Linthurst e-mailed Ms. McMahon cautioning that OSWER informed him “the hill will not likely agree to merging into oblivion the ombudsman and we could end up with legislation to do it their way.” This underlines the fine line the Agency was trying to walk in eliminating the National Ombudsman while trying to avoid offending Congress so much that it adopts legislation to create a truly independent and visible National Ombudsman office. Such an independent office could employ Mr. Kaufman. *See Doc. 88529.*
259. Later that afternoon, as the OIG Transfer contact, Mr. Linthurst e-mailed OSWER’s Laurie May a draft of his summary of the key issues to be resolved between OSWER and OIG regarding the Transfer. Ms. May e-mailed back her comments and added “if we do this and the hill is unhappy or GAO is unhappy, we are back to square one.” *Doc. 88618 is a true and accurate copy of an EPA E-Mail.*
260. Early that evening, Mr. Linthurst e-mailed OIG General Counsel Bialek regarding employment decisions related to the Transfer and OSWER’s role in such decisions, writing “they don’t want the folks, they want them to be our problem.” Inspector General Tinsley was sent a copy of the e-mail. *Doc. 93258 is a true and accurate copy of an EPA E-Mail.*

261. Shortly thereafter, Mr. Linthurst e-mailed OSWER warning that “if this program is to operate in the same visible mode as it did in OSWER, that is, be separate and apart, identifiable and separately accountable, I suspect Nikki will suggest it is not right for the OIG.” This portends what happened – upon Transfer to OIG the ombudsman function lost even the elements of independence it did have at OSWER. *Doc. 88634 is a true and accurate copy of an EPA E-Mail.*
262. In an October 26, 2001 e-mail, Mr. Linthurst reported to Inspector General Tinsley his final summary of the outstanding Transfer issues to be resolved with EPA Deputy Administrator Fisher. They included “can/should the Agency portray the Ombudsman function as not separate and distinct? If not separate and distinct, how will the Hill react? How will GAO perceive moving the function to another office and making it less visible?” This reveals that environmental safety and health concerns raised by Mr. Kaufman and the resulting negative Congressional perception of the Agency figured prominently in the Transfer decision. Mr. Linthurst then identifies a string of employment-related questions that Ms. Tinsley should raise with Deputy Administrator Fisher related to the Transfer. *Doc. 88522 is a true and accurate copy of an EPA E-Mail.*
263. On that same day, U.S. Representative Bilirakis sent a letter to Administrator Whitman requesting a meeting to discuss why the National Ombudsman must be strengthened. *See Doc. 97052.*
264. On November 6, 2001, Administrator Whitman responded to the earlier September 13, 2001 letter of U.S. Representative Bilirakis that had requested she permit Mr. Kaufman to assist on the Ombudsman investigation in Tarpon Springs. Ms. Whitman wrote the Congressman only that she would soon publicly announce the Transfer, and the

Ombudsman Martin is aware that “at any time, he can request the recruitment of an additional staff person to support his activities.” *Doc. 96892 is a true and accurate copy of an EPA DOC.*

265. On November 9, 2001, Administrator Whitman responded to U.S. Representative Dingell's September request for documents related to Mr. Kaufman and the National Ombudsman with a two-page letter largely explaining the Privacy Act, and which indicated some responsive documents had been “forwarded.” *Doc. 001570 is a true and accurate copy of an EPA DOC.*
266. On November 19, 2001, the third organizational meeting on the Transfer between OSWER and OIG occurred. *Doc. 89208 is a true and accurate copy of an EPA DOC showing a calendar entry.*
267. On November 26, 2001, OSWER Transition lead Laurie May e-mailed a list of “rough questions and answers that may come up” at Congressional briefings related to the Transfer. Very prominently, question No. 2 of six questions asks “WILL HUGH KAUFMAN BE MOVING OVER TO THE OIG ALONG WITH THIS FUNCTION?” The answer May provided is “No,” that since December 2000 Mr. Kaufman has been prohibited from performing any Ombudsman-related work. May e-mailed this list to Mr. Kaufman's first and second-line supervisors DAA Shapiro and AA Horinko in preparation for the Transfer announcement. *Doc. 93228 is a true and accurate copy of an EPA DOC.*
268. Sometime in late November 2001 Mr. Kaufman had a conversation with Assistant Inspector General Gary L. Johnson who would supervise the OIG “Ombudsman.” Mr. Johnson told Mr. Kaufman that he cannot move over to the OIG “Ombudsman” function.

269. A November 27, 2001 e-mail by OIG's Linthurst expressed his view that National Ombudsman Martin was expected to make a statement once the Transfer was announced, "apparently he is not in agreement." Mr. Linthurst went on to state "the fun begins but clearly this guy will have to be reigned in quickly to work as we do and going to the press is not one of our fundamental principles." Mr. Linthurst sent this e-mail to an EPA Region 3 employee and to Mark Bialek, the OIG General Counsel. *Doc. 88607 is a true and accurate copy of an EPA E-Mail.*

"Deep Reservations" of Congress Ignored

270. On November 27, 2001 Administrator Whitman publicly announced that after "much deliberation and serious consideration from recommendations from various stakeholders and the General Accounting Office . . . the Inspector General and I have agreed to adopt the recommendations of the GAO" and relocate the National Ombudsman function from OSWER to OIG. Ms. Whitman's press release stated this will "give the function the independence and impartiality recommended by a number of Members of Congress." The proposed effective date was in January 2002. *Docs. 88660 is a true and accurate copy of an EPA E-Mail with attachments. Doc. 89330 is a true and accurate copy of an EPA DOC.*

271. Administrator's statement on the Transfer was pretextual, most obviously because the Transfer did not afford the "Ombudsman" the independence she claimed. It did not provide the hiring authority and a separate budget recommended by GAO, it eliminated any mediation function between parties to disputes, eliminated all programmatic functions of the National Ombudsman, and eliminated the ability to freely talk to the press and Congress about Agency matters without prior permission. The change did not address the

major concerns of the various Ombudsman associations, and was not supported by National Ombudsman Martin, or by Members of Congress, the main constituency.

272. Further, the new OIG "Ombudsman" structure did not create a GS-14 or GS-15 position that could accommodate Mr. Kaufman's skills and salary level, essentially blocking any attempt on his part to apply for a position. Also, the new structure would prevent Mr. Kaufman from working in a position in which he could professionally speak to Congress and the public should a position at his salary level open up, because no such "Ombudsman" function was possible. In addition, it would be futile for Mr. Kaufman to apply for any such position, because it was made clear to him he was barred from doing so.
273. The Agency's primary, if not sole, motive in terminating the National Ombudsman and creating a structure that lacked independence and visibility and eliminated the functions that caused Agency embarrassment was to retaliate against Mr. Kaufman for his pattern of protected activity in informing the public, industry, and Congress of the Agency's performance in its hazardous waste and disposal functions, and his complaints of retaliation. Further, the elimination of a meaningful Ombudsman function removed a remedy for Mr. Kaufman should his whistleblower claims succeed.
274. Also on November 27, 2001, the U.S. Department of Labor Occupational Safety and Health Administration (OSHA) informed Mr. Kaufman and the Agency that after investigating Mr. Kaufman's Spring 2001 whistleblower complaints, it planned to rule in Mr. Kaufman's favor that the Agency had illegally retaliated against him for his whistleblower activities. In its final ruling OSHA would order the Agency to immediately reinstate Mr. Kaufman to him to his ombudsman duties. *Doc. 94734 is a true and accurate copy of an EPA DOC.*

275. Also on November 27, 2001, National Ombudsman Martin wrote in a letter to Administrator Whitman that her intended Transfer would be “as a practical matter, dissolving the National Ombudsman function at the EPA” and requested that if that is her intention, to please notify Mr. Martin in writing. Mr. Martin also informed her that OSHA planned to rule that Mr. Kaufman’s whistleblower complaints are meritorious. The memo was read by Administrator Whitman. *Doc. 61302 is a true and accurate copy of an EPA DOC.*
276. Also on November 27, 2001, writing in an e-mail to Agency employees, Laurie May commented that Administrator Whitman ultimately made the Transfer decision and it is “obviously a very sensitive matter.” *Doc. 89175 is a true and accurate copy of an EPA.*
277. On November 28, 2001, U.S. Representative Bilirakis wrote to Administrator Whitman that he had “deep reservations” about her decision to relocate the Ombudsman function to OIG and that her proposal does not address all of the GAO recommendations. The Congressman made specific inquires regarding the independence of the transferred office. *Doc. 93703 is a true and accurate copy of a letter from a MOC.*
278. That day the Associated Press ran an article on the Transfer announcement recounting the EPA’s attempts to rein in the National Ombudsman and Mr. Kaufman. *Doc. 89185 is a true and accurate copy of an EPA E-mail with an attached News Article.*
279. A November 29, 2001 Tampa Times Tribune article described U.S. Representative Bilirakis’ “deep reservations” and his concern that the Shattuck Ombudsman investigation may not resume. The Congressman opined “It’s been a wait-and-see situation out there since Hugh was taken out of there. . . .” On the same day, U.S. Representative Diane

DeGette wrote a letter to the EPA expressing her concerns about the Transfer. *Doc.*

002477 is a true and accurate copy of a News Article. See Doc. 97051.

280. On November 30, 2001, U.S. Representative Jeff Miller wrote to Administrator Whitman that he was concerned that relocating the National Ombudsman position to OIG “does not provide the independence that the ombudsman so drastically needs.” Also on that day, U.S. Senators Specter and Santorum and U.S. Representative Sherwood told Administrator Whitman in a letter of their concerns regarding the Transfer. *Doc. 000338 and 000298 are true and accurate copies of letters to the EPA by several MOC.*

281. On November 30, 2001, Mr. Kaufman was referenced in a Copley News Service article stating that if Mr. Martin is to be an independent and impartial Ombudsman he must be able to decide what to investigate and what recommendations to make. Mr. Kaufman is quoted stating that “If some other entity takes over the responsibility for Mr. Martin's cases and/or makes decisions on his cases... then Mr. Martin will no longer be ombudsman.” *Doc. 002475 is a true and accurate copy of a News Article.*

282. A November 30, 2001 Scranton Times headline declared “Ombudsman Buried with Marjol Lead,” followed by an article criticizing the Transfer. *Doc. 000296 is a true and accurate copy of a News Article.*

283. In a December 2, 2001 St. Petersburg Times article on the Transfer, U.S. Congressman Bilirakis asked “is this really a true independence?” Agency spokeswoman Tina Kreisher was reported to be “emphatic that Martin would not be able to bring Kaufman over with him.” Mr. Kaufman told the Times that at the OIG, Ombudsman Martin “will be buried in the hall of zombies in an office that they created . . . He'll sit in an office with a telephone

and a desk and he'll have no budget, no staff and no cases, except the ones the inspector general says he can do." *Doc. 002063 is a true and accurate copy of a News Article.*

284. In a December 6, 2001 letter, U.S. Senator Allard asked Administrator Whitman six specific questions related to the independence of the Ombudsman after the Transfer to OIG, including "Will the Ombudsman have independent hiring authority?" *Doc. 88774 is a true and accurate copy of a letter to the EPA from a MOC produced by the Agency in this proceeding.*
285. On December 7, 2001, U.S. Representatives Bilirakis, DeGette, Otter, Jeff Miller, Thurman James Traficant (D-OH), Dan Miller (R-FL), John Shimkus (R-IL), Joe Skeen (R-NM), Shelley Berkley (D-NV), Hilda Solis (D-CA), Tom Udall (D-NM), Mike Simpson (R-ID), Charlie Norwood (R-GA), and Mark Udall (D-CO) jointly signed a letter to Administrator Whitman stating their concern that "your recent decision to relocate the Ombudsman. . . will not create sufficient independence for the Ombudsman to function effectively," and asked that she withhold implementation of the Transfer until planned Congressional hearings were held. *Doc. 96935 is a true and accurate copy of a letter to EPA from several MOC produced by the Agency in this proceeding.*
286. An Agency divisional Inspector General responded to a December 8, 2001e-mail from OIG Transfer contact Linthurst, who had asked about providing Ombudsman Martin "guidance" on how the "OIG is expected to interact with outside persons" after the Transfer. He responded "If we need written policy then it should reflect what we currently do-that is Eileen [McMahon] is the primary press person and others (DIGs etc.) should talk to the press only if she passes the baton to that person. This is needed to ensure the consistency of our message to the press, and to ensure that what's said is what the OIG

wants to convey." Ms. McMahon would head the new Congressional and Media Relations function at the OIG. *Doc. 89762 is a true and accurate copy of an EPA E-Mail.*

287. A December 11, 2001 article in the Coeur D'Alene Press reported that a powerful mining magnate was urging a Idaho county prosecutor to intervene in court to block the Transfer, saying he was a "passionate believer" in what National Ombudsman Martin was trying to accomplish in his probe of Agency conduct in the region. Mr. Kaufman is quoted saying "EPA looked the other way while the Valley was being contaminated and looted."

OSWER official Steve Luftig, who had called Mr. Kaufman "Ubergruppenfuher Herr Inquisitor Kaufmann," e-mailed the article to Inspector General Tinsley as "awful less than truthful statements." *Doc. 89129 is a true and accurate copy of a News Article.*

288. On December 12, 2001, the Agency announced the consent decree for the Shattuck Superfund site and requested public comment. The proposed decree would require Shattuck/Citigroup to shoulder no more than a third of the cost of the removal of the radioactive waste from the site, with taxpayers footing the open-ended remainder of the costs. *Doc. 002032 is a true and accurate copy of an EPA DOC.*

289. On December 13, 2001, OIG contact person Linthurst commented on a draft letter from Inspector General Tinsley to U.S. Representative Bilirakis in response to his November 28, 2001 letter on Ombudsman independence, stating he felt it did "not answer the questions clearly – maybe the intent?" The next day, the letter was sent with the same unclear message intentionally to Bilirakis with Ms. Tinsley's signature. *Docs. 89810 and 89822 are true and accurate copies of several EPA E-Mails with attachments.*

290. On December 18, 2001, the United States Ombudsman Association wrote a detailed letter to Administrator Whitman expressing its concern about the Transfer and its support for

legislative efforts to reauthorize and strengthen National Ombudsman function. It wrote it was "quite familiar with Hazardous Waste Ombudsman's office, which USOA has always found to be in the best tradition of the Ombudsman institution" and that an Ombudsman should be "able to hire and fire his or her own staff and to select and prioritize the issues to be investigated." It urged Administrator Whitman to defer the Transfer until after Congressional inquiry into the matter. A letter with a similar theme was sent on this date from the Association to U.S. President George Bush. *Doc. 61311 is a true and accurate copy of a letter sent to the EPA that was produced by EPA in this proceeding. Doc. 61319 is a true and accurate copy of an EPA DOC.*

291. On December 18, 2001, National Ombudsman Martin issued his working findings on the Ombudsman investigation of the Coeur D'Alene Basin Superfund site, finding EPA fraud and charging that "every decision of the EPA, that has so far been reviewed, related to the cleanup. . . was not based on the requisite science or in compliance with EPA's own rules for waste cleanup and disposal." The local media went into a "frenzy" seeking the report. *Doc. 94740 is a true and accurate copy of an EPA DOC. Doc.89853 is a true and accurate copy of an EPA E-Mail.*
292. OIG's Mr. Linthurst e-mailed a colleague on National Ombudsman Martin's Coeur D'Alene findings: "From a human capital perspective, he appears fully dedicated to his mission and conducts his activities with vigor!" Within a month Mr. Linthurst would be elevated to the position of OIG acting Assistant Inspector General for Human Capital. *Doc. 88804 is a true and accurate copy of an EPA DOC.*
293. On December 18, 2001, a coalition of more than 70 groups signed a letter to U.S. Senator Jim Jeffords, then Chairman of the Senate Environment and Public Works Committee,

saying the Transfer would “further bury the ombudsman function” and that he should instead support Senator Allard’s bill to create an independent National Ombudsman. *Doc. 002711 is a true and accurate copy of a letter sent to a MOC.*

294. On December 18, 2001, a community activist supporting the National Ombudsman’s investigation of the Stauffer Superfund site in Tarpon Springs filed a civil suit to block the Transfer. The suit was reported in an article appearing in the Tampa Tribune the following day, which was distributed to EPA officials. *Doc. 90122 is a true and accurate copy of an EPA E-mail with an attached copy of News Article.*
295. On December 19, 2001, Mr. Kaufman filed another complaint against the Agency under various whistleblower statutes charging, *inter alia*, the Agency with illegal retaliation by pursuing the proposed Transfer. He later withdrew that complaint without prejudice. *Doc. 104505 is a true and accurate copy of a complaint against the EPA and associated documents.*
296. On December 19, 2001, U.S. Representatives Bilirakis, James McGovern (D-MA), Charles Rangel (D-NY), Jim McDermott (D-WA), Thomas Allen (D-ME), Bill Pascrell (D-NJ), Edolphus Towns (D-NY), Steve Largent (R-OK), and Lloyd Doggett (D-TX) wrote to Administrator Whitman asking that she defer the Transfer until after upcoming Congressional hearings. *Doc. 000861 is a true and accurate copy of a letter to the EPA from several MOC.*
297. On December 19, 2001, U.S. Senator Specter appeared at a press conference in Throop, PA saying he and other members of the Pennsylvania delegation would call for Congressional hearings exploring why Mr. Kaufman was reassigned, calling for a total removal of the waste at the Marjol Battery site, and members of the Throop City Council

appeared urging that Agency officials responsible for the Marjol site be fired. *Doc.*

100376 is a true and accurate copy of an EPA E-Mail.

298. In a December 21, 2002 e-mail, OSWER Transfer Contact May summarized a recent verbal agreement between AA Horinko and Inspector General Tinsley she witnessed. The agreement identified which existing National Ombudsman responsibilities could not be performed by the transferred OIG "Ombudsman" because they were program functions. Ms. May mentioned the "informational" and "general problem solving" functions, including responding to "a citizen Inquiry regarding the status of a site, for example, or the desire to chat in person for a few minutes with someone who could explain a remedy." Ms. May sent the e-mail to OIG General Counsel Bialek. *Doc. 88516 is a true and accurate copy of an EPA E-Mail.*

299. A December 22, 2001 article in the Coeur D'Alene Press on the Transfer quoted U.S. Senator Crapo stating "I have received assurances from the EPA they will honor our requests while the Ombudsman is under the IG's office. If they are not honoring that, I want to know about it." Three weeks earlier, Senator Crapo had joined with U.S. Senator Craig and U.S. Representatives Otter and Simpson in a letter to Inspector General Tinsley stating that while they viewed the Transfer with "cautious optimism," it is "essential that the Office of the Ombudsman retains a separate identity and be able to conduct its affairs independently." This reflected Senator Crapo's earlier indications to AA Horinko he would consider taking a "wait and see" approach to the Transfer. *Doc. 000880 is a true and accurate copy of a News Article. Doc. 88771 is a true and accurate copy of a letter to the EPA from several MOC with a fax cover sheet.*

300. On December 27, 2001, Administrator Whitman responded to the December 7, 2001 letter from 15 members of the U.S. House of Representatives, writing for instance to Representative Bilirakis that the Transfer, "which is in the best interest of the citizens and communities who have sought timely assistance from the Ombudsman, must be implemented on schedule." That same day, she responded to U.S. Senator Allard's letter of December 6, 2001 which asked six questions about the Ombudsman's independence after the proposed Transfer, stating that the Ombudsman's "staff resources, including hiring, is a responsibility retained by each Assistant Inspector General." *Doc. 88779 is a true and accurate copy of an EPA DOC.*
301. On December 27, 2001 the borough of Throop, PA, the County of Lackawanna, PA and a local Throop citizen filed suit in federal court seeking declaratory and injunctive relief to halt the Transfer and preserve National Ombudsman files. Two days later the suit was reported in an article in the Scranton Times Tribune, which also mentioned the removal of Mr. Kaufman's duties as a concern of National Ombudsman Martin. *Doc. 90890 is a true and accurate copy of a complaint filed in federal district court.*
302. On December 28, 2001, National Ombudsman Martin responded in a letter to U.S. Senator Crapo's public request of the prior week to "know about" any failure to honor the Ombudsman's independence after the Transfer. Mr. Martin told the Senator that the OIG plans to confiscate and review Mr. Martin's Ombudsman files, and that Mr. Martin could not independently "weigh-in" on the Coeur D'Alene cleanup plan under the OIG. *Doc. 000877 is a true and accurate copy of an EPA DOC.*
303. On that same day, the Associated Press quoted a spokesperson for U.S. Senator Allard stating "We're essentially fighting a two-front battle here," to protect National

Ombudsman Martin, by requesting a delay in the Transfer and introducing legislation to create an independent office.

304. A December 31, 2001 Washington Times opinion article outlined Mr. Kaufman's charges of Administrator Whitman's conflict of interest in dealing with several hazardous sites due to her ownership of Citigroup stock. It underlined that Citigroup was slated to pay "just one-fifth of the \$35 million needed to clear up" the Shattuck site in Colorado. This was "chump change compared to what it is going to cost to do it right," it quotes Kaufman commenting, with estimates running as high as \$100 million. It also outlines Mr. Kaufman's charges that a Citigroup financial partner was also responsible for the clean up at the lead-contaminated Marjol Battery site in Pennsylvania. *Doc. 002060 is a true and accurate copy of a News Article.*
305. On January 3, 2002 OIG Deputy Counsel Sandy Keith e-mailed Assistant Inspector General Johnson that "I am concerned about how it will be decided what new cases the Ombudsman works on. . . . he will not be able to pick and choose which cases he handles. There will obviously be a period of adjustment while he and we learn to recognize what cases are properly assigned to Ombudsman. . . ." *Doc. 80000 is a true and accurate copy of an EPA E-Mail.*
306. Later that day, Mr. Keith admitted in an e-mail to Inspector General Tinsley that in developing the OIG Ombudsman position, his office had not reviewed the American Bar Association and Ombudsman Association standards for ombudsmen and have "no idea what they provide." He stated the "Ombudsman" position description was mistaken in that "It reads as though he takes care of addressing citizen and public complaints himself." *Doc. 80079 is a true and accurate copy of an EPA E-Mail.*

307. On January 4, 2002, Assistant Inspector General Johnson reported that he spoke to Joe Martyak, the new Associate Administrator for Public Affairs for the Agency, who requested “bullets addressing the OIG’s independence, investigative authority, hotline function, and that the Ombudsman will not be effectively buried and abolished in the OIG.” *Doc. 89943 is a true and accurate copy of an EPA E-Mail.*
308. On January 7, 2002, National Ombudsman Martin issued his report on the Shattuck/Citigroup Superfund site in Denver, Colorado. Mr. Martin found that Administrator Whitman had not recused herself from participation in the site cleanup and Martin “is unaware of any government regulation or rule that allows Ms. Whitman to be involved in any way in the Shattuck/Citigroup superfund site if she has a conflict of interest.” Mr. Martin said that EPA misled the public repeatedly as to the dangers of the Shattuck site, he reported a range of serious violations of environmental law in the proposed remedy for the Shattuck site, and stated that there is no guarantee the current remedy will protect the public health and welfare. Mr. Martin warned that because of the pending Transfer and takeover of his Ombudsman files, he would not be able to perform his duties as National Ombudsman to effectively challenge what he viewed as a flawed remedy. *Doc. 500208 is a true and accurate copy of an EPA DOC.*
309. On January 7, 2002, an opinion article by Al Knight supporting the Agency’s preclusion of Mr. Kaufman’s Ombudsman duties was sent to and read by Administrator Whitman. Knight’s similarly supportive article a year earlier resulted from information sent to Knight secretly by OSWER official Stephen Luftig, who had referred to Mr. Kaufman as “Ubergruppenfuher Herr Inquisitor Kaufmann.” *Doc. 500424 is a true and accurate copy of a Press Report.*

310. On January 8, 2002, U.S. Senator Allard wrote Administrator Whitman, cautioning that “the negative results of this decision must be considered” and “it is important that the [Ombudsman] Office continue to have sufficient freedom.” The Senator therefore requested that Ms. Whitman delay the Transfer until further analysis can be made. The next day, he issued a press release describing the letter. *Doc. 89315 is a true and accurate copy of a letter to the EPA from a MOC.*
311. On January 9, 2002, National Ombudsman Martin sent out interrogatories and a request for production of documents to begin new investigation into the Agency's highly criticized response to the environmental hazards following the terrorist attacks on the World Trade Center on September 11, 2001. Press reports the day before had reported, Martin wrote, that “a large number of people living and working near or at Ground Zero are experiencing health effects from the hazardous waste generated with the collapse of these buildings, and that the EPA at best has and continues to mishandle their responsibilities to protect the public health and the environment.” Mr. Martin wrote he would not be able to finish this investigation because he was informed that on January 14, 2002 the OIG would take his files and effectively dissolve his function. The Agency' response to the hazards at the World Trade Center site addressed issues covered under one, if not all, of the Whistleblower Acts. *Doc. 61332 is a true and accurate copy of an EPA DOC.*
312. A January 9, 2002 Denver Post article reported Mr. Kaufman's reaction to a Post series reporting that the Agency often ignored, downplayed or failed to respond to health threats posed by toxic gas entering homes and businesses from underground chemical spills. “One of the founding principles of Superfund was to make sure people weren't getting hazardous materials through the airborne pathway. How could somebody have forgotten

that?" Mr. Kaufman asks. The Post exposé spurred a new Ombudsman investigation which Mr. Kaufman called the National Ombudsman's "No. 1 priority." At that time Mr. Kaufman was not performing Ombudsman duties. *Doc. 002718 is a true and accurate copy of a Press Article.*

313. A January 9, 2002 press release by U.S. Senator Allard called for a halt in the Transfer. *Doc. 002545 is a true and accurate copy of a press release from a MOC.*

314. On January 10, 2002, National Ombudsman Martin and the watchdog group Government Accountability Project jointly filed a complaint and motion for a temporary restraining order to block the Transfer. The complaint charged that the Agency took "wrongful acts" in retaliation for Mr. Martin's exercising his Constitutional right to free speech. The complaint and later memorandum described the history of the investigation of the Shattuck Superfund site by Mr. Martin and Mr. Kaufman, the March 11, 2001 Denver Post article outlining Mr. Kaufman's charge of Administrator Whitman's conflict of interest, and the March 16, 2001 memorandum precluding Mr. Kaufman from Ombudsman duties. The memorandum charges that "willing speakers, here plaintiff Martin and his investigator Hugh Kaufman, are impaired from providing future information because of unconstitutional infringements on employees' speech rights." *Doc. 002552, 002566, and 002720 are true and accurate copies of documents filed in federal court.*

315. On January 11, 2002, U.S. Senator Crapo abandoned his "wait and see" stance on the Transfer, writing Administrator Whitman that after meeting with an OIG official, "I have concluded the independence that I seek for the Ombudsman is not possible within the structure of the Inspector General's office. Therefore, I am asking you to stop this transfer." U.S. Senator Craig sent a similar letter that day. *Docs. 96964 and 94782 are*

true and accurate copies of letters sent to the EPA from several MOC that were produced by the Agency in this proceeding.

**Status Quo Reestablished And
Mr. Kaufman Resumes Ombudsman Duties**

316. On January 11, 2002, in response to National Ombudsman Martin's suit, U.S. Federal District Court Judge Richard W. Roberts issued a temporary restraining order (Roberts Order) enjoining the Agency from undertaking the Transfer, and required all parties "to maintain the status quo." *Doc. 002560 is a true and accurate copy of an order issued in federal court.*
317. Numerous news publications reported on the Roberts Order in the week after the order issued. *Doc. 002468 and 002466 are true and accurate copies of Press Articles.*
318. In light of the Roberts Order requiring maintenance of the status quo, on January 12, 2002, Mr. Kaufman resumed his Ombudsman duties and began assisting National Ombudsman Martin on the World Trade Center investigation. Mr. Kaufman was quoted in the New York Daily News stating that "the evidence I have seen demonstrates that there is and was a substantial health risk that the EPA had documented in its testing. . . . There's enough evidence to demonstrate that Mrs. Whitman's statement to the brave rescue workers and the people who live there was false." *Doc. 500600 is a true and accurate copy of a News Article.*
319. Based on his more than 30 years of experience, Mr. Kaufman viewed the EPA's lack of a meaningful response to the environmental disaster in lower Manhattan and its affirmative public lies that the air was safe as not only gross aberrations from its standard procedures. He did not view them only as tragic failures to protect the rescue workers, residents, office

workers, and school children in New York City – the victims of the World Trade Center attacks. Mr. Kaufman believed the Agency's behavior shocked the conscience and had crossed the line into the realm of illegal activity. He was morally repulsed at the notion of being in any way associated with that illegal action. He believed these actions veered dramatically from the EPA's designated mission, a mission he witnessed the Agency define from its inception. While Mr. Kaufman pursued the Ombudsman investigation and explored the shocking Agency failures to the best of his ability under the protection of the Roberts Order, he knew the Agency was aggressively moving to end it.

320. On January 14, 2002, the publication Salon ran an extensive article describing the Roberts Order, the conflict between the Agency and Ombudsman Martin and Mr. Kaufman, and highlighted the charges by Mr. Martin and Mr. Kaufman that Administrator Whitman has a conflict-of-interest by virtue of her Citigroup holdings. *Doc. 80062a is a true and accurate copy of a News Article.*
321. Spurred by the article, on January 16, 2002, Inspector General Tinsley commenced an investigation into the allegations by Mr. Kaufman and National Ombudsman Martin that Administrator Whitman had a conflict of interest because of her various financial relationships in regards to three Agency hazardous waste sites: Shattuck, Denver, CO; Marjol Battery, Throop, PA, the World Trade Center, New York NY. *See 00069.*
322. Commenting on the Salon article, newly appointed Acting Assistant Inspector General for Human Capital Linthurst e-mailed Ms. McMahon recommending that the OIG halt the Transfer because "These guys ruin the reputation of all they touch." *Doc. 88876 is a true and accurate copy of an EPA E-Mail.*

323. On January 17, 2002, U.S. Representative Nadler held a press conference with other elected officials on the EPA's failed response to the World Trade Center collapse. Mr. Kaufman appeared at the press conference to describe the National Ombudsman investigation. Mr. Nadler also wrote that day to National Ombudsman Martin requesting that he expand his investigation, a copy of which was sent to Administrator Whitman. That same day, U.S. Senators Craig and Crapo and U.S. Representatives Simpson and Otter wrote to Mr. Martin that they were "pleased to hear" that a federal judge halted his transfer to the OIG, and offered their assistance in his investigation of the Coeur D'Alene site. *Docs. 96992 and 94783 are true and accurate copies of letters to the EPA from MOC that were produced by the Agency in this proceeding.*
324. On January 18, 2002, Inspector General Tinsley e-mailed a colleague regarding coverage of U.S. Representative Nadler's press conference. She wrote "Hugh was on TV at ground zero telling the people of New York that EPA had let them down!" adding sarcastically "Isn't America a great place." Nineteen months later, she would sign a comprehensive investigatory report concurring with Mr. Kaufman that "EPA's early statement that the air was safe to breathe was incomplete in that it lacked necessary qualifications and thus was not supported by the data available at the time." *Doc. 88906 is a true and accurate copy of an EPA E-Mail. Doc. 002751 is a true and accurate copy of excerpts from an EPA Inspector General report.*
325. On January 21, 2002, Crain Communication's Waste News quoted the legal director of the Government Accountability Project calling the Transfer "far worse than a gag order. . . It's an effective death sentence for the concept of an independent citizens' watchdog at the EPA." The group had filed suit with National Ombudsman Martin against the Agency.

Agency spokesperson Joseph Martyak defended the Transfer in the article, stating "We deny [Martin's] claims that he will be adversely affected by the move of his Office to the Inspector General, and we deny his claims of retaliation and continue to believe that he will function not only fully but better under the Office of the Inspector General. . . . I would like to point out to you that the General Accounting Office report suggested moving the ombudsman out of the Office of Solid Waste, and the ombudsman himself stated in that GAO report that he thought he should be moved out of the Office of Solid Waste."

Doc. 002753 is a true and accurate copy of a Press Article.

326. On January 22, 2002, U.S. Representative Pallone, the ranking member on the House Subcommittee on Environment and Hazardous Materials, wrote to the subcommittee Chairman Gillmor, complaining that the Agency was withholding documents requested by him and U.S. Representative Dingell on September 9, 2001 in anticipation of hearings on the National Ombudsman, and requested that the Chairman request the documents. *Doc. 001572 is a true and accurate copy of a letter from a MOC.*

327. On January 23, 2002, Ombudsman Martin sent out interrogatories and requests for production of documents to commence an investigation into the Agency's response to toxic gases released in the aftermath of the recent anthrax contamination of the Hart Senate Office Building. *Doc. 61344 is a true and accurate copy of an EPA DOC.*

328. On that same day, the Washington Times ran an article in which U.S. Senator Charles Grassley (R-IA) warned of his own party's efforts to stifle the National Ombudsman and that "Trying to eliminate this position gives the appearance of attempting to silence a critic." *Doc. 002756 is a true and accurate copy of a News Article.*

329. In a January 24, 2002, OSWER e-mail, director of the Superfund program Steve Luftig recommended colleagues coordinate Agency response to National Ombudsman Martin's interrogatories on the Hart Office Building. They should preface their answers with a litany of criticisms of Mr. Martin such as "bias prior to the investigations," Mr. Luftig suggests, which should then be "leaked" to the press. He commented that one supposed Ombudsman investigation "sounds like fascists in WWII." *Doc. 90271 is a true and accurate copy of an EPA E-Mail.*
330. On January 29, 2002, U.S. Senator Santorum wrote a letter to the Agency addressing its hindering and obstructing the work of the National Ombudsman. *See Doc. 97053.*
331. On January 30, 2002, National Ombudsman Martin wrote a memo to Administrator Whitman which she read, warning that his investigation found that the Agency failed to adequately test the Hart Senate Office Building for contaminants, and therefore could not conclude it was safe for Senators, their staff, and visitors. He recommended that the Administrator instruct the regional EPA office to develop and implement a comprehensive environmental testing program in that regard. *Doc. 500507 is a true and accurate copy of an EPA DOC.*
332. A January 30, 2002 article in The Hill quoted Mr. Kaufman on Ombudsman Martin's request for results of chlorine tests for the Hart Senate Office Building. He told The Hill "If we don't see it, we'll have to tell the Senate that adequate testing was not done on the Hart Building." Mr. Kaufman was also quoted in a Washington Post article two days later commenting on the testing. *Doc. 002464 and 002461 are true and accurate copies of Press Articles.*

333. On February 4, 2002, Administrator Whitman wrote a five-sentence response to the U.S. Ombudsman Association's letter of December 18, 2002 that had detailed their deep concerns on the Transfer. Ms Whitman wrote she was "grateful for the opportunity to learn your thoughts and concerns and to benefit from your organization's perspective." The letter was clearly a pro-forma response with little substance. *Doc. 61315 is a true and accurate copy of an EPA DOC.*
334. On February 5, 2002, U.S. Senators Specter and Santorum and U.S. Representative Sherwood wrote Administrator Whitman again urging her to defer the Transfer until Congressional investigation into the National Ombudsman. *Doc. 000298 is a true and accurate copy of a letter to the EPA from several MOC.*
335. On February 19, 2002, Mr. Kaufman received a fully Successful performance evaluation from his supervisor, DAA Shapiro, without any adverse comments. Mr. Kaufman had alerted the Agency and Mr. Shapiro of his participation in the World Trade Center Ombudsman hearings before this evaluation. *Doc. 002184 is a true and accurate copy of an EPA DOC.*
336. On February 23, 2002, Mr. Kaufman chaired Ombudsman hearings in New York City to explore the Agency's response to the World Trade Center attacks. He listened to experts and members of the community regarding the environmental aftermath. The Agency refused to attend the hearing, the first such refusal in Ombudsman Martin's tenure as Ombudsman. The Agency issued a press release that day criticizing the "tone of the investigation" in the World Trade Center hearing, stating it "may be off-off-Broadway, but it is still pure theater." *Doc. 90360 is a true and accurate copy of an EPA DOC.*

337. On February 24, 2002, U.S. Representative Nadler was quoted in the New York Daily News on the World Trade Center Ombudsman hearings, stating "The city and federal government are in violation of the law and are playing dice with the lives of downtown residents." Mr. Kaufman is quoted as stating "This is the first time in the history of ombudsman hearings . . . that all levels of government have stonewalled." Mr. Kaufman is similarly quoted in The New York Times the same day. *Docs. 002277 and 002299 are true and accurate copies of News Reports.*
338. On February 25, 2002, Administrator Whitman responded to U.S. Representative Jeff Miller's letter of November 30, 2001 concerning the Transfer, stating that she shared his desire for an independent Ombudsman, and, *inter alia*, that even Ombudsman Martin himself believes "that locating the ombudsman's office outside of OSWER would increase his independence. . . ." as if Martin supported the Transfer, which was wildly false. The Administrator wrote a similar letter to U.S. Senator Specter the same day. *Docs. 000319 and 97028 are true and accurate copies of several EPA DOC.*
339. On February 27, 2002, National Ombudsman Martin wrote a memorandum to EPA Regional Office 2 concerning schools that were located near a hazardous waste barge in lower Manhattan where hazardous debris was being loaded from the World Trade Center site. Ombudsman Martin warned the Agency that tests showed schools that had been cleaned were being recontaminated. He alerted Region 2 that all of the World Trade Center dust should be presumed to contain asbestos (for which there are no safe levels). Mr. Martin recommended various steps the Agency could take to protect the safety of the school children and young adults. *Doc. 000307 is a true and accurate copy of an EPA DOC.*

340. On February 28, 2002, two investigators who identified themselves as agents with the OIG came to the National Ombudsman Office and began soliciting information regarding Mr. Kaufman from the secretary in the office in an encounter that appeared to the secretary to be unusual and clearly improper.
341. On March 3, 2002, Mr. Kaufman wrote a memorandum to Administrator Whitman charging that the February 28, 2002 encounter was an attempt to put him under surveillance illegally and if so would be a violation of the Roberts Order. He warned he would go to Judge Roberts to report on this violation should it continue. *Doc. 500174 is a true and accurate copy of an EPA DOC.*
342. An article from the Coeur D'Alene Press on or about March 4, 2002 described the February 28, 2002 incident in the Ombudsman office, quoting Mr. Kaufman "She can't talk to Mike Crapo because of the litigation, but it's OK to send two agents over here to spy on me and badger Bob Martin's secretary." Mr. Kaufman was referring to reports that Administrator Whitman refused to meet with U.S. Senator Crapo regarding the National Ombudsman citing the ongoing litigation with Mr. Martin. *Doc. 90357 is a true and accurate copy of an EPA E-Mail containing a Press Article.*
343. On March 4, 2002, a federal judge approved the final cleanup plan for the Shattuck Superfund site. Under the plan, Shattuck/Citigroup was required to only shoulder a fraction of the additional cleanup costs resulting from the Shattuck Ombudsman hearings. The taxpayers would shoulder the rest. *See OIG report pages 000073.*
344. On March 7, 2002, U.S. Representative Nadler wrote Administrator Whitman with a range of questions regarding the Agency's response to the World Trade Center collapse of September 11, 2001, and requested that the Agency participate in the second Ombudsman

hearing on the matter in four days. *Doc. 96996 is a true and accurate copy of a letter to the EPA from a MOC.*

345. On March 8, 2002, Representative Nadler released a 20-page “White Paper” on the response to the World Trade Center collapse, concluding the Agency did little to address indoor air contamination and it misled the public that the air in Lower Manhattan was safe. The paper repeatedly cited the February 23, 2002 Ombudsman hearings chaired by Mr. Kaufman in presenting evidence of what the Congressman believed were EPA’s serious and dangerous failures. *Doc. 97004 is a true and accurate copy of a report issued by a MOC.*
346. On March 11, 2002, Mr. Kaufman led the second Ombudsman hearing on EPA’s response to environmental hazards ensuing from the World Trade Center attacks.
347. On March 15, 2002, Mr. Kaufman led an Ombudsman hearing on the Marjol Battery site.
348. On March 27, 2002, the Agency sent a second letter to the president of the U.S. Ombudsman association in response to its December 18, 2001 letter to U.S. President Bush. The association letter had recommended that the Ombudsman be “able to hire and fire his or her own staff and to select and prioritize the issues to be investigated.” This second letter, which followed Administrator Whitman’s February 4th five-sentence response, was more detailed and referenced the GAO recommendations and National Ombudsman Martin’s support for moving the function out of OSWER. AA Horinko’s name appeared on the signature line, but a lower-level Agency employee actually signed the letter, suggesting Ms. Horinko reluctance to sign it. *Doc. 61319 is a true and accurate copy of an EPA DOC.*

**The Transfer Is Finalized
Terminating Mr. Kaufman's Ombudsman Duties**

349. On April 12, 2002, Judge Roberts dismissed National Ombudsman's suit against the Agency on procedural grounds and removed the stay on the Transfer. Within hours the Agency terminated the National Ombudsman function, and Mr. Kaufman ceased performing Ombudsman duties.
350. A "near melee" occurred after the hearing, according to Insight Magazine. Reportedly, U.S. Representative Nadler confronted the EPA's press spokesman, and then "shouts and questions from people whose homes are near EPA cleanup sites, including Shattuck Chemical and Pennsylvania's Marjol Battery, competed with the New Yorkers in berating the agency for harassing the Ombudsman. The angry crowd eventually forced EPA officials to escape to the elevators, witnesses say." *Doc. 002759 is a true and accurate copy of a Press Article.*
351. The Agency's primary, if not sole, motive in Terminating the National Ombudsman and the Transfer was to retaliate against Mr. Kaufman for his pattern of protected activity in informing the public, industry, and Congress of the Agency's performance of its hazardous waste and disposal functions, and his complaints of retaliation.
352. By April 15, 2002, Acting Assistant Inspector General for Human Capital Linthurst e-mailed OIG spokeswoman McMahon about whether AIG Gary Johnson, slated to head the new office overseeing the OIG "Ombudsman," would be in town to assist in the Transfer. When McMahon replied no, that he was "flying out tomorrow morning," Linthurst quipped in an e-mail "but but but who will control this guy in the interim?", a clear

- reference to National Ombudsman Martin. *Doc. 88964 is a true and accurate copy of an EPA E-Mail.*
353. On April 16, 2002, Mr. Kaufman was interviewed by the McNeal Lehrer News Hour on the Agency's response to the environmental aftermath of the World Trade Center attacks. Mr. Kaufman stated "It's our job at EPA not to count the dead bodies ten or twenty years down the line, not to operate on people to get rid of cancer. It's our job to prevent cancer. And we fell down on the job." *Doc. 002245 is a true and accurate copy of a transcript from a news program.*
354. On April 17, 2002, Agency scientist Doug Bell, who had been detailed to move over to the OIG "Ombudsman," wrote an e-mail to Assistant Inspector General Johnson stating that until he received the appropriate forms he would refuse to allow the files of the National Ombudsman to be transferred to the OIG. Further, he did not consent to be detailed to the OIG "Ombudsman," as the Agency planned. *Doc. 61323 is a true and accurate copy of an EPA E-Mail.*
355. By April 19, 2002 the OIG had changed the locks to the National Ombudsman function office, removed all the computers and phones and had seized all the files for the pending National Ombudsman cases without informing National Ombudsman Martin. From that time forward the OIG "Ombudsman" operated as had been planned.
356. Viewing the Transfer as a constructive dismissal, on April 22, 2002 National Ombudsman Martin resigned from his post. *Doc. 88755 is a true and accurate copy of an EPA DOC.*
357. Six days later a satirical Seattle Post-Intelligencer cartoon by a Pulitzer-prize-winning cartoonist depicted "The Bush Environmental Calendar" showing "Earth Day" surrounded by 19 anti-environmental actions attributed to President Bush which included "Dump EPA

Ombudsman Day.” *Doc. 001121 is a true and accurate copy of a cartoon appearing in a newspaper.*

358. From March 16, 2001 to January 11, 2002, and from April 12, 2002 to the present time, Mr. Kaufman has operated in a diminished capacity in the Agency with a diminished title in comparison to the stature, challenge and responsibility he enjoyed when staffing the National Ombudsman. As a result of the Transfer, and generally as a result of his being prohibited from performing National Ombudsman-related duties that use all of his 30 plus years of experience at the Agency, and despite his performance awards, Mr. Kaufman is now in an inferior position in the agency with no opportunity for advancement.
359. Mr. Kaufman continues to hold the same pay grade since at least 1999.
360. For at least the first 18 months after the OIG “Ombudsman” office was created, no position was ever advertised as open for applicants.

The “Higher Bureaucracy” At EPA Prevails

361. Shortly after the Transfer, AA Horinko answered the January 29, 2002 letter of U.S. Senator Santorum about its hindering the National Ombudsman, stating, in part that Mr. Kaufman is “a Program Analyst and has never been assigned to an investigator position or been authorized by the Agency to represent that he is an investigator.” This represent a further demeaning statement by an Agency official, since the only title used by Mr. Kaufman for his entire tenure as National Ombudsman Martin’s staff person was Chief Scientist/Principal Investigator. He investigated Agency action or inaction at hazardous waste sites. *Doc. 90262 is a true and accurate copy of an EPA E-Mail with an attached draft EPA letter.*

362. On June 25, 2002, the United States Senate Committee on Environment and Public Works held hearings on Agency Office of the Ombudsman and a Ombudsman reauthorization bill. *Doc. 001237 is a true and accurate copy of transcripts from a hearing of the U.S. Senate.*
363. At the June 25, 2002 hearing:
- a. The GAO testified that "'if EPA intends to have an Ombudsman function that is consistent with the way the position is typically defined in the Ombudsman community, placing the national Ombudsman within the OIG it has not achieved that objective.'" *See Doc. 001258.*
 - b. U.S. Representative Nadler spoke of the environmental hazards plaguing his constituents in the lower Manhattan because of the World Trade Center attacks, and he applauded Ombudsman Martin and Mr. Kaufman, adding "Except for the Ombudsman, the EPA has yet to engage in a public and transparent process regarding the cleanup of the World Trade Center. If anything, it has done just the opposite." *See Doc.001248.*
 - c. U.S. Senator Specter said "The inference that I draw is that Mr. Martin was ousted because people did not like what they-- the higher bureaucracy at EPA did not like what he was doing and that it was retribution." *See Doc. 1284.*
364. On July 16, 2002, the U.S. House of Representatives held hearings on the Agency Ombudsman and the proposed legislation to create an independent office. *Doc. 001527 is a true and accurate copy of transcripts from a hearing of the U.S. House of Representatives.*
365. At the July 16th hearing:

- a. A representative of GAO testified "If the Congress and EPA intend to have an Ombudsman function that is consistent with the way the position is typically defined, then placing the function within the IG's Office will not achieve that objective." *See Doc. 001543.*
- b. U.S. Representative Pallone said of the Agency "I think that I have to come to the assumption that they're trying to hide something if they feel that they have to essentially dissolve or destroy the Ombudsman's function. Somehow they see it as a threat to the Agency," and concluded later that the Agency ignored the GAO recommendations to create an independent ombudsman office and was "going to proceed to do the opposite, essentially." *See Doc. 001533.*
- c. U.S. Representative Norwood (R-GA) railed "there is no agency in the United States that is more patronizing or arrogant than the EPA" and complained that "EPA is going to control" the Ombudsman office "until we tell them different." *See Doc. 001599 and 001615.*
- d. U.S. Representative Sherrod Brown (D-OH) lamented "I'm concerned, like many others, that the Administrator has sought to marginalize the Ombudsman because the Office has done too good a job at pointing out the Agency's shortcomings and not to make it more independent as she has claimed." *See Doc. 001537.*
- e. U.S. Representative John Shimkus (R-IL) said "Let's restore an office in the EPA of an Ombudsman that has some real teeth, that our citizens can go to." *See Doc.*
- f. U.S. Representative Ed Towns (D-NY) worried that for New Yorkers impacted by the World Trade Center dust after the September 11th attacks, under the

“restructured EPA, the Ombudsman cannot decide whether or not this is a case worth taking.” *See Doc. 001538.*

- g. Agency Counsel to the Inspector General Mark Bialek admitted that in creating the OIG “Ombudsman,” “It was not our intention to change the function of the preexisting Ombudsman at OSWER so that it would come into conformance with the ABA standards or other organization standards for a traditional Ombudsman;” and that the OIG is not authorized to conduct mediation. *See Doc. 001549.*
- h. Agency General Counsel Robert Fabricant asserted “We truly believe that the independence of the Agency has been enhanced with the shift to the Office of Inspector General.” *See Doc. 001574.*

366. In a July 16, 2002 e-mail, Agency press officer Robin Woods reported to the Agency Assistant Associate Administrator for Public Affairs after attending the House hearing: “I have to say, it was very evident that the ombudsman is wildly popular with Congress and their constituents. I don’t know the first thing about this issue, but all seem to consider [Ombudsman] Martin very popular and very successful. . . It appears he filled a gap that will be hard to ignore.” *Doc. 500125 is a true and accurate copy of an EPA E-Mail.*

367. On July 17, 2002, the OIG released its report on Administrator Whitman’s conflict of interest that originated with charges raised by Mr. Kaufman and Ombudsman Martin. The report found that Administrator Whitman had meetings on various hazardous waste sites with Citigroup ownership while she owned Citigroup shares, but the OIG exonerated her. OIG failed to investigate the World Trade Center site as it relates to her admitted holdings in financial instruments issued by Port Authority of New York and New Jersey, an owner of the World Trade Center site. This issue had been raised by Mr. Kaufman and National

- Ombudsman Martin and the Administrator had recused herself from activities related to the Port Authority. *Doc. 000068 is a true and accurate copy of an EPA DOC representing a report issued by the EPA Inspector General.*
368. On July 12, 2002, OSHA affirmed Mr. Kaufman's whistleblower claims and concluded that the Agency had illegally directed a continuing pattern of retaliation against him for his whistleblower activities. It held he had performed a "too effective job" in support of the Ombudsman Program and ordered immediate reinstatement to ombudsman duties. However, a meaningful ombudsman function no longer existed at the Agency. The Agency appealed the ruling.
369. On August 15, 2002, Administrator Whitman filed her financial disclosure statement for 2001 and claimed capital gains of between \$100,000 and \$1,000,000 from the sale of her Citigroup stock. *Doc. 001964 is a true and accurate copy of a financial disclosure statement filed by then-Administrator Whitman.*
370. On September 25, 2002, U.S. Senators Crapo and Jeffords introduced bipartisan legislation, S. 515, to create an independent Agency Ombudsman with hiring authority and an independent budget. That same day, Administrator Whitman wrote Senator Jeffords, Chairman of the U.S. Senate Environment and Public Works Committee, opposing the bill. *Doc. 96140 is a true and accurate copy of an EPA E-Mail, an e-mail to the Agency from the staff of a MOC with a partial attachment, and a true and accurate copy of an EPA DOC which were produced by the Agency in this proceeding.*
371. A October 9, 2002 Scranton Times article reported that the OIG "Ombudsman" who visited traveled to Pennsylvania to address the Marjol Battery site "stormed out of the Throop municipal building, unhappy that the meeting was open to the public," as public

officials and residents "looked on in disgust" as she left. This was eerily reminiscent of the June 5, 2000 Tarpon Springs walkout. Mr. Kaufman, who attended at the invite of local officials, told the Times "When the ombudsman talks are being done behind closed doors, deals are being made and you don't get the trust of the people and the public officials."

Doc. 002532 is a true and accurate copy of a News Report.

372. On October 31, 2002, the GAO issued its second report on the Agency Ombudsman. It recommended that the Agency "reconsider placement of the national ombudsman in the OIG." It concluded the "ombudsman's independence is constrained because he does not control his own budget, staff, or workload." It held that the Transfer raises issues regarding "(1) the extent to which the function will serve as a "true" ombudsman in interactions with the public and (2) the potential impact of the reorganization on the OIG's role," specifically that the "Inspector General can no longer independently audit and investigate that function, as the OIG can at other federal agencies where the ombudsman and the OIG are separate." *Doc. 00001 is a true and accurate copy of a report issued by the U.S. General Accounting Office.*

373. At the request of Administrator Whitman, on November 25, 2002, , Region 3 employees e-mailed her a recent Scranton Times article about the Marjol Battery site. In the article, Ms. Whitman disputed claims of Throop officials and residents that the site poses danger to the community, and that the new OIG "Ombudsman" is not responsive to their concerns. The article quoted Mr. Kaufman at length about Ms. Whitman's conflicts of interest at the site, and saying the site "still poses a real danger to the Throop residents." *Doc. 92049 is a true and accurate copy of a News Article.*

374. On April 8, 2003, Administrator Whitman wrote a three-page letter to the Chairman of the U.S. Senate Committee on Environment and Public Works opposing S. 515, Senator Jeffords' and Crapo's bill creating an independent Ombudsman office. *Doc. 89222 is a true and accurate copy of an EPA DOC.*
375. On May 21, 2003, a Republican-controlled U.S. Senate unanimously passed S. 515. This challenge, passed over the Administrator's staunch objections, comprised a bipartisan effort to reverse Administrator Whitman's elimination of what had once been the most effective voice in hazardous waste site remediation for Congress and America's local communities. *Doc. 002763 is a true and accurate copy of a Bill and a report on a BILL.*
376. On June 23, 2003, Administrator Whitman resigned from the Agency.
377. On March 10, 2004, a group of residents, office workers and school children filed suit against the Agency and former Administrator Whitman for misleading them as to the hazards of the World Trade Center debris and failing to follow the Agency's responsibilities, in violation of the U.S. Constitution and Agency regulations. The complaint cited U.S. Congressman Nadler's White Paper, which had heavily quoted the Ombudsman hearings chaired by Mr. Kaufman. On February 2, 2006, U.S. Federal District Court Judge Deborah Batts ruled "the allegations in this case of Whitman's reassuring and misleading statements of safety after the September 11, 2001 attacks are without question conscience shocking." *Benzman v. EPA*, 2006 U.S. Dist. LEXIS 4005, 57 (S.D.N.Y.).
378. On June 25, 2007, former Agency Administrator Whitman testified under oath before the U.S. House Subcommittee on the Constitutional, Civil Rights, and Civil Liberties that the National Ombudsman function was transferred to the OIG because it was not generating

enough reports. She testified: “we were concerned there had been numerous times where the Ombudsman’s office had conducted hearings at Superfund sites, raised very serious questions about the EPA’s response in those Superfund sites, and yet not issued a report on them, and in order for EPA to change its behavior and to make a difference we needed to have those reports.” This is an entirely new pretextual reason given by Ms. Whitman for the Transfer for which there is no corroborating evidence.

V. RETALIATORY CONDUCT

a. General Retaliatory Conduct

379. Mr. Kaufman incorporates the averments of all paragraphs above as though fully set forth herein.
380. A private cause of action exists for an employee who believes he or she has been discharged or otherwise discriminated against by any person with respect to his or her compensation, terms, conditions, or privileges of employment because the employee had engaged in certain “protected activities” involving the administration or enforcement of the underlying Whistleblower Acts.
381. Activities that have been found to have been “protected activities” under the Whistleblower Acts include raising concerns regarding potential violations of, or improper administration of CERCLA, ERA, TSCA, CAA, SDWA, SWDA and FWPCA with an employer, the press and lawmakers, causing investigations of such concerns, charging employer retaliation for raising such concerns, and filing whistleblower complaints (hereafter referred to generally as “Protected Activity” or “Protected Activities.”)
382. Respondent is a covered employer under the Whistleblower Acts.
383. For all relevant periods, Mr. Kaufman has been an employee of the Agency.

384. During 1999, 2000, 2001, and 2002, Mr. Kaufman engaged in Protected Activities. These included Mr. Kaufman's
- a. raising concerns at Ombudsman hearings about of EPA wrongdoing regarding hazardous waste remediation at the Shattuck Superfund site in Denver, CO, the Stauffer Superfund site in Tarpon Springs, FL, the Bunker Hill Superfund site in Coeur D'Alene, ID, the Marjol Battery Superfund site in Throop, PA, and the World Trade Center site in New York, NY.
 - b. raising concerns about the Agency's protection of the health and welfare of the public at the aforementioned sites with the Agency, the media, the public and Congress, and generally objecting to improper Agency management conduct which has been harming the environment and violating environmental and criminal laws;
 - c. as a result of raising awareness, causing members of the U.S. Congress and their staff, the press, and the public to criticize the Agency's failure to protect the health and welfare of the public at those sites, and for retaliating against Mr. Kaufman and the National Ombudsman;
 - d. researching and making public Administrator Christine Todd Whitman's conflicts-of-interest and her participation in site remediations prohibited by federal law in Colorado, Pennsylvania, and New York;
 - e. causing the U.S. Congress and the press to further investigate concerns raised by Mr. Kaufman, resulting in media reports, Congressional hearings, GAO investigations, Agency Inspector General investigations, and proposed federal legislation;

- f. participating in numerous Congressional investigations;
- g. supporting efforts to create an independent National Ombudsman;
- h. filing and pursuing whistleblower complaints against the Agency; and
- i. raising the retaliatory actions by the Agency against Mr. Kaufman and the National Ombudsman internally, with Congress, and with the press, acts that include refusing to fund travel to the June 5, 2000 Tarpon Springs Ombudsman hearing; pursuing the Draft Ombudsman Guidelines, threatening to remove Mr. Kaufman's ombudsman duties; removing Mr. Kaufman's Ombudsman duties, precluding Mr. Kaufman from performing Ombudsman duties; refusing Congressional requests that he perform Ombudsman duties, refusing to promote him to new staff positions with the National Ombudsman on at least three occasions and for the entire period those positions were open; badmouthing Mr. Kaufman internally, to the press and to members of the U.S. Congress with demeaning and false statements; eliminating the National Ombudsman and replacing it with a non-programmatic position at the OIG with little, if any independence and reduced responsibilities while pursuing an intense public relations campaign asserting the contrary; ensuring Mr. Kaufman could not be employed at the new OIG "Ombudsman" position; and
- j. following an intentional and systemic pattern and practice of hindering and finally ending the National Ombudsman function.

385. In 2000, 2001, and 2002, the Agency discriminated and retaliated against Mr. Kaufman with respect to his compensation, terms, conditions, or privileges of employment and interfered with the operations of the National Ombudsman function because he engaged in

Protected Activities. EPA threatened to remove Mr. Kaufman's Ombudsman duties, removed his Ombudsman duties, refused his repeated requests to perform Ombudsman duties, refused National Ombudsman Martin's requests that Mr. Kaufman perform Ombudsman duties, refused Congressional requests for Mr. Kaufman to perform Ombudsman duties, made false statement internally, to the media, and to Congress asserting his alleged poor performance of Ombudsman duties, eliminated the National Ombudsman function so he could never perform Ombudsman duties, created a hostile environment for him, systematically discriminated against staff with Ombudsman duties, and generally failed to assign him duties consistent with his training, experience and qualifications.

386. Mr. Kaufman continued to receive fully Successful performance ratings and was not put on any performance improvement plan for any period relevant to this proceeding.
387. The evidence shows the discrimination and retaliation were taken primarily, if not solely, because of Mr. Kaufman's participation in the statutorily Protected Activities.
388. The Agency has given pretextual reasons for taking these actions that Mr. Kaufman charges are discriminatory and retaliatory in an effort to justify these discriminatory and retaliatory acts.
389. Mr. Kaufman suffered and continues to suffer adverse consequences from the illegal discriminatory and retaliatory acts of the Agency. While he continues to hold the same pay grade, Mr. Kaufman is now in an inferior position at the Agency with a profound loss of responsibility, stature, and promotional potential. The Agency generally has failed to assign him duties consistent with his training, experience and qualifications, and he has not received a pay raise or promotion since these events.

390. As result of the Agency's illegal retaliation, the public has been deprived of its most effective advocates, the National Ombudsman and Mr. Kaufman, for challenging Agency practices that fail to protect their health and welfare.

b. Specific Retaliatory Acts

391. The specific discriminatory and retaliatory acts taken against Mr. Kaufman in 2000, 2001, and 2002, in violation of the Whistleblower Acts, include.

i. The Removal of Mr. Kaufman's Ombudsman Duties December 14, 2000

392. Mr. Kaufman incorporates the averments of all paragraphs above as though fully set forth herein.

393. In violation of the Whistleblower Acts, on December 14, 2000 EPA OSWER Assistant Administrator Timothy Fields issued a memorandum to Mr. Kaufman, stating that "you will no longer be assigned Ombudsman-related duties and the reference to such duties will be removed from your position description."

394. The issuance of the December 14, 2000 memorandum is an illegal retaliatory action in violation of the Whistleblower Acts, given Mr. Kaufman's extensive Protected Activities prior to its issuance, the knowledge of Mr. Fields and other Agency officials of those activities, the nexus between those activities and the December 14, 2000 memorandum, and the pretextual reasons given by Mr. Fields and the Agency for issuing that memorandum.

395. Protected Activities that contributed to the illegal retaliation against Mr. Kaufman are broad ranging, as described herein, and include 1) Mr. Kaufman's participation in the National Ombudsman investigations of the Shattuck and Tarpon Springs hazardous waste

sites which forced the Agency's reversal of existing remedies, 2) his investigation's role in causing a probing December 6, 2000 letter to be written to Mr. Fields from key members of Congress addressing Ombudsman independence and specific investigations spearheaded by Mr. Kaufman, 3) Mr. Kaufman's participation in the Coeur D'Alene investigation that spurred a critical report from a Member of Congress, 4) Mr. Kaufman's public criticisms of the Draft Ombudsman Guidelines and 5) his claims of retaliation by the Agency.

396. Mr. Kaufman's investigation and public criticisms of the Agency's response to the Tarpon Springs, Florida hazardous waste site specifically fueled Mr. Field's perception that those criticisms reflected poorly on Mr. Fields, influenced the 2000 Presidential election, and contributed to the loss of his position at the Agency.

397. The evidence shows that Mr. Field's discrimination and retaliation resulted from the Agency's animus towards Mr. Kaufman.

398. Mr. Kaufman suffered and continues to suffer adverse consequences from the illegal discriminatory and retaliatory acts of the Agency.

ii. The Decision to Assign Barry Stoll to the Ombudsman on March 5, 2001

399. Mr. Kaufman incorporates the averments of all paragraphs above as though fully set forth herein.

400. In violation of the Whistleblower Acts, on March 5, 2001, then-Acting Assistant Administrator for OSWER Michael Shapiro informed Ombudsman Martin that Barry Stoll would be detailed to assist him with the Marjol Battery investigation, though Mr. Kaufman, National Ombudsman Martin and various members of Congress specifically urged that Mr. Kaufman provide that assistance.

401. The decision to assign Barry Stoll on March 5, 2001 to assist on Marjol Battery is an illegal retaliatory action in violation of the Whistleblower Acts, given Mr. Kaufman's extensive Protected Activities prior to its issuance, the knowledge of Mr. Shapiro and other Agency officials of those activities, the nexus between those activities and the decision to reassign Mr. Stoll, the fact that Mr. Kaufman was the most qualified person for the position, and the pretextual reasons given by the Agency for not permitting Mr. Kaufman to assist on the Marjol Battery investigation.
402. The evidence shows the Agency's discrimination and retaliation resulted from the Agency's animus towards Mr. Kaufman because of his Protected Activities.
403. Mr. Kaufman suffered and continues to suffer adverse consequences from the illegal discriminatory and retaliatory acts of the Agency .

iii. Removal of the Hiring Freeze for Ombudsman Support Position
March 2001 through January 2002

404. Mr. Kaufman incorporates the averments of all paragraphs above as though fully set forth herein.
405. In violation of the Whistleblower Acts, sometime in March 2001, though no later than March 21, 2001, the Agency removed the hiring freeze for National Ombudsman staff positions that Mr. Kaufman was most qualified to fill. The Agency would not consider him for such positions, though Mr. Kaufman, National Ombudsman Martin and various members of Congress specifically urged that Mr. Kaufman provide that assistance. That retaliation continued during the at least through January 12, 2002, when Mr. Kaufman resumed Ombudsman duties pursuant to a court order.

406. The decision not to consider Mr. Kaufman for those vacant positions after the hiring freeze was removed was illegal retaliation in violation of the Whistleblower Acts, given Mr. Kaufman's extensive Protected Activities before the freeze was removed and after, the knowledge of Mr. Shapiro and other Agency officials of those activities, the nexus between those activities and the decision not to consider Mr. Kaufman, and the pretextual reasons given by the Agency for not permitting Mr. Kaufman to assist National Ombudsman Martin.
407. The evidence shows that the Agency's discrimination and retaliation resulted from the Agency's animus towards Mr. Kaufman because of his Protected Activities.
408. Mr. Kaufman suffered and continues to suffer adverse consequences from the illegal discriminatory and retaliatory acts of the Agency .

iv. The March 16, 2001 Memorandum

409. Mr. Kaufman incorporates the averments of all paragraphs above as though fully set forth herein.
410. In violation of the Whistleblower Acts, on March 16, 2001, then-Acting Assistant Administrator for OSWER Michael Shapiro issued a memorandum to Mr. Kaufman, stating that "you are prohibited from performing any Ombudsman-related functions and accordingly, you are prohibited from issuing and signing any documents on behalf of the Ombudsman or the Ombudsman function."
411. The issuance of the March 16, 2001 memorandum is an illegal retaliatory action in violation of the Whistleblower Acts, given that Mr. Kaufman sought to perform and Ombudsman Martin sought to utilize Mr. Kaufman for Ombudsman tasks, Mr. Kaufman's extensive Protected Activities prior to its issuance, the knowledge of Mr. Shapiro and other

Agency officials of those activities, the nexus between those activities and the March 16, 2001 memorandum and the pretextual reasons given by the Agency for issuing that memorandum.

412. The evidence shows that the Agency's discrimination and retaliation resulted from the Agency's animus towards Mr. Kaufman because of his Protected Activities, including the publication of the Denver Post newspaper article on March 11, 2001, in which Mr. Kaufman raises a conflict-of-interest involving then-Administrator Christine Todd Whitman and Citigroup as to the Shattuck hazardous waste site.
413. Mr. Kaufman suffered and continues to suffer adverse consequences from the illegal discriminatory and retaliatory acts of the Agency.

v. The Decision to Create a New Ombudsman
Support Position on April 6, 2001

414. Mr. Kaufman incorporates the averments of all paragraphs above as though fully set forth herein.
415. In violation of the Whistleblower Acts on April 6, 2001, then-Acting Assistant Administrator for OSWER Michael Shapiro issued a memorandum to Ombudsman Martin inquiring as to the "status of the recruitment actions" regarding filling new full time positions created to support the Ombudsman function, at a time when Mr. Kaufman, National Ombudsman Martin and various members of Congress specifically requested that Mr. Kaufman assist the Ombudsman. Efforts to fill those new vacant positions had been frozen until an Agency-wide hiring freeze was lifted sometime on or before March 21, 2001 for the National Ombudsman support positions.

416. The issuance of the April 6, 2001 memorandum is an illegal retaliatory action in violation of the Whistleblower Acts, given Mr. Kaufman's extensive Protected Activities prior to its issuance, the knowledge of Mr. Shapiro and other Agency officials of those activities, the nexus between those activities and the April 6, 2001 memorandum, and the pretextual reasons given by the Agency for denying Mr. Kaufman Ombudsman duties.
417. The evidence shows that the Agency's discrimination and retaliation resulted from the Agency's animus towards Mr. Kaufman because of his Protected Activities, including the publication of the Denver Post newspaper article on March 11, 2001, in which Mr. Kaufman is quoted as raising a conflict-of-interest involving then-Administrator Christine Todd Whitman as to the Shattuck site.
418. Mr. Kaufman suffered and continues to suffer adverse consequences from the illegal discriminatory and retaliatory acts of the Agency.

vi. The Refusal to Promote Mr. Kaufman on April 16, 2001

419. Mr. Kaufman incorporates the averments of all paragraphs above as though fully set forth herein.
420. In violation of the Whistleblower Acts on April 16, 2001, then-Acting Assistant Administrator for OSWER Michael Shapiro issued a memorandum to Ombudsman Martin denying Mr. Martin's request to assign Mr. Kaufman Ombudsman duties, at a time when Mr. Kaufman and members of Congress requested that he be permitted to perform Ombudsman duties, and he was the most qualified person to assist Ombudsman Martin.
421. The issuance of the April 16, 2001 memorandum is an illegal retaliatory action in violation of the Whistleblower Acts, given Mr. Kaufman's extensive Protected Activities prior to its issuance, the knowledge of Mr. Shapiro and other Agency officials of those activities, the

nexus between those activities and the April 16, 2001 memorandum and the pretextual reasons given by the Agency for issuing that memorandum.

422. The evidence shows that the Agency's discrimination and retaliation resulted from the Agency's animus towards Mr. Kaufman because of his Protected Activities, including the publication of the Denver Post newspaper article on March 11, 2001, in which Mr. Kaufman is quoted as raising a conflict-of-interest involving then-Administrator Christine Todd Whitman and Citigroup as to the Shattuck site.
423. Mr. Kaufman suffered and continues to suffer adverse consequences from the illegal discriminatory and retaliatory acts of the Agency.

vii. The Refusal to Promote Mr. Kaufman on May 22, 2001

424. Mr. Kaufman incorporates the averments of all paragraphs above as though fully set forth herein.
425. In violation of the Whistleblower Acts on May 22, 2001, then-Acting Assistant Administrator for OSWER Michael Shapiro issued a memorandum to Ombudsman Martin denying Martin's request to assign Mr. Kaufman Ombudsman duties, at a time when Mr. Kaufman and members of Congress requested that he be permitted to perform Ombudsman duties.
426. The issuance of the May 22, 2001 memorandum is an illegal retaliatory action in violation of the Whistleblower Acts, given Mr. Kaufman's extensive Protected Activities prior to its issuance, the knowledge of Mr. Shapiro and other Agency officials of those activities, the nexus between those activities and the May 22, 2001 memorandum and the pretextual reasons given by the Agency for issuing that memorandum.

427. The evidence shows the Agency's discrimination and retaliation resulted from the Agency's animus towards Mr. Kaufman because of his Protected Activities, very prominently the publication of the Denver Post newspaper article on March 11, 2001, in which Mr. Kaufman is quoted as raising a conflict-of-interest involving then-Administrator Christine Todd Whitman and Citigroup as to the Shattuck site.
428. Mr. Kaufman suffered and continues to suffer adverse consequences from the illegal discriminatory and retaliatory acts of the Agency.

viii. The Decision to Eliminate the OSWER Ombudsman on November 27, 2001, The Failure to Create an Appropriate Position at the Inspector General Office, And Bar From Being Considered For Any Such Position

429. Mr. Kaufman incorporates the averments of all paragraphs above as though fully set forth herein.
430. In violation of the Whistleblower Acts on November 27, 2001, then-Administrator Christine Todd Whitman announced the termination of the OSWER Ombudsman function and the transfer of a greatly diminished "Ombudsman" function to the OIG instead of creating the independent Ombudsman office being pursued by OSWER beginning January 19, 2001 or supporting the bills in Congress to create an independent Ombudsman office with hiring authority and its own budget. The decision to pursue the Transfer was an illegal discriminatory and retaliatory action taken against Mr. Kaufman that would eliminate Mr. Kaufman's prior position, eliminate National Ombudsman Martin's ability to hire him, eliminate the programmatic functions of the National Ombudsman such as mediation and conducting public hearings, eliminate the ability of National Ombudsman and staff to speak openly with Congress and the media without prior permission, eliminate the only real avenue for accountability for EPA actions to Congress and local

communities, eliminate the National Ombudsman's ability to chose his own investigations, eliminate Mr. Kaufman's promotional ability within the Ombudsman function for which he was uniquely qualified, bar Mr. Kaufman from applying for any position at the transferred "Ombudsman" function, and remove any obvious remedy that Mr. Kaufman would have in this current proceeding that involved reinstatement to an ombudsman investigative position of the type he held before the Agency's discriminatory and retaliatory acts.

431. The decision to pursue the Transfer, which became effective April 12, 2002, is an illegal retaliatory action in violation of the Whistleblower Acts, given Mr. Kaufman's extensive Protected Activities prior to the announcement and the Transfer, the knowledge of then-Administrator Whitman and other Agency officials of those activities, the nexus between those activities and the announcement and Transfer and the pretextual reasons given by the Agency for the Transfer.
432. The evidence shows that the Agency's discrimination and retaliation resulted from the Agency's animus towards Mr. Kaufman because of his Protected Activities.
433. Mr. Kaufman suffered and continues to suffer adverse consequences from the illegal discriminatory and retaliatory acts of the Agency.

ix. The April 12, 2002 Removal of Mr. Kaufman's Ombudsman Duties

434. Mr. Kaufman incorporates the averments of all paragraphs above as though fully set forth herein.
435. In violation of the Whistleblower Acts on April 12, 2002, the Agency decided to finalize its announced termination of the OSWER Ombudsman function and the transfer of the Ombudsman function to the Agency Office of Inspector General, a discriminatory and

retaliatory action taken against Mr. Kaufman, so as to demote him from the Ombudsman duties he had properly performed between January 11, 2002 through April 12, 2002 when a temporary restraining order was in effect.

436. The April 12, 2002 Transfer is an illegal retaliatory action in violation of the Whistleblower Acts, given Mr. Kaufman's extensive Protected Activities and especially his chairing the World Trade Center Ombudsman hearings and discussing the Agency's failed response to that hazardous site in the media, the knowledge of then-Administrator Whitman and other Agency officials of those activities, the nexus between those activities and the final Transfer and the pretextual reasons given by the Agency for the Transfer.
437. The evidence shows that the Agency's discrimination and retaliation resulted from the Agency's animus towards Mr. Kaufman because of his Protected Activities.
438. Mr. Kaufman suffered and continues to suffer adverse consequences from the illegal discriminatory and retaliatory acts of the Agency.

c. Pattern and Practice of Discrimination

x. Creation of a Hostile Work Environment So as to Hinder Ombudsman Investigations from June 2000 to April 12, 2002

439. Mr. Kaufman incorporates the averments of all paragraphs above as though fully set forth herein.
440. In violation of the Whistleblower Acts, from June 2000 to April 12, 2002, the Agency improperly hindered Ombudsman investigations and created a hostile work environment for Mr. Kaufman, a discriminatory and retaliatory course of conduct taken against Mr. Kaufman.

441. The improper hindrance of Ombudsman investigations and the creation of a hostile work environment for Mr. Kaufman hindered the reporting of safety concerns protected by the Whistleblower Acts. This was an illegal pattern of discrimination and retaliation in violation of the Whistleblower Acts, given Mr. Kaufman's extensive Protected Activities beginning with the September 1999 Shattuck Ombudsman hearing and continuing through April 2002, the knowledge of Agency officials of those activities, the nexus between those activities and the hindrance of National Ombudsman investigations and the hostile work environment, the pretextual reasons given by the Agency for the interference.
442. Specific actions taken by the Agency that created a hostile work environment for Mr. Kaufman include:
- a. the Agency's reducing Mr. Kaufman's job duties and diminishing his responsibilities;
 - b. the Agency's eliminating Mr. Kaufman's job title from "Senior Investigator" and requiring him to use the generic title "Program Analyst;"
 - c. the Agency's hindering National Ombudsman Martin's duties by, for instance, failing to inform Mr. Martin at the time when it was attempting to restrain Mr. Kaufman from performing ombudsman-related duties with its December 14, 2000 and March 16, 2001 memoranda despite the fact that Mr. Kaufman ran the day-to-day operations of the National Ombudsman office and received virtually all his assignments from Mr. Martin; failing to consult National Ombudsman Martin on the creation of the Draft Ombudsman Guidelines that would change his duties and failing to inform him when it published the guidelines in the Federal Register; unilaterally assigning Barry Stoll to staff Mr. Martin without his consent; failing

to inform Mr. Martin it was terminating the National Ombudsman function until after its public announcement; and failing to inform Mr. Martin it was confiscating all his National Ombudsman files and changing the locks on his office in April 2002;

- d. the Agency's taking Mr. Kaufman off the Marjol Battery Ombudsman investigation on February 22, 2001;
- e. the Agency's attempt to isolate Mr. Kaufman from members of the U.S. Congress, a key Ombudsman constituency, by disparaging him before Members of Congress, for instance by Agency Administrator Whitman personally telling U.S. Senators Arlen Specter and Rick Santorum, and AAA Michael Shapiro informing the two U.S. Senators and U.S. Representative Don Sherwood and Throop Mayor Stan Lukowski by letter on April 30, 2001, that Mr. Kaufman could not longer perform ombudsman-related duties because he had not adequately performed his job, though when the Senators looked at his personnel files they found nothing in the files that supported the disparaging remarks, and in fact Mr. Kaufman continued to receive fully Successful performance ratings, was not put on any performance improvement plan and had not received any Form SF-50 or SF-52 regarding any change in his duties;
- f. the Agency's making disparaging comments to Mr. Kaufman individually, telling him in the December 14, 2000 Fields Memo that his actions at recent hearings had been "inappropriate, unprofessional, and lacking in impartiality," and that his behavior "undermined the credibility and effectiveness of OSWER and EPA," a stance that the U.S. Department of Labor held to be pre-textual on the part of the

Agency to hide its true retaliatory motives in making the comments, i.e. to curb his Protected Activities;

- g. the Agency's attempt to put Mr. Kaufman under surveillance; and
- h. the Agency's making disparaging comments about Mr. Kaufman to the media, for instance planting negative newspaper articles about him, and Agency Administrator Jane M. Kenny saying in a February 2002 press release that an upcoming Ombudsman hearing to be chaired by Mr. Kaufman on the air contamination around the Ground Zero World Trade Center site "may be off-off Broadway, but it is still pure theater."

443. This harassment was sufficiently severe or pervasive so as to have detrimentally affected a reasonable person, and did alter the conditions of Mr. Kaufman's employment, create an abusive working environment, interfere with his performance of Ombudsman duties, and discourage Agency employees from raising of environmental safety-related concerns regarding EPA practices.

444. Mr. Kaufman suffered and continues to suffer adverse consequences from the illegal discriminatory and retaliatory acts of the Agency.

xi. Systematic Pattern of Improper Hindrance of Ombudsman Investigations
from June 2000 to April 12, 2002

445. Mr. Kaufman incorporates the averments of all paragraphs above as though fully set forth herein.

446. In violation of the Whistleblower Acts from June 2000 to April 12, 2002, the Agency practiced a systematic policy of discrimination against the National Ombudsman and its staff which it applied repeatedly and intentionally against Mr. Kaufman and which

improperly hindered National Ombudsman investigations and ultimately led to the elimination of the function.

447. The systemic policy of discrimination against the National Ombudsman and its staff was the Agency's standard operating procedure and comprised an illegal pattern and practice of discrimination in violation of the Whistleblower Acts.

448. This systemic discrimination altered the conditions of Mr. Kaufman's employment, created an abusive working environment, interfered with his performance of Ombudsman duties, and discouraged Agency employees from raising of environmental safety-related concerns regarding Agency practices.

449. Mr. Kaufman suffered and continues to suffer adverse consequences from the illegal discriminatory and retaliatory acts of the Agency.

VI. PRAYER FOR RELIEF

WHEREFORE Mr. Kaufman respectfully requests a resulting judgment for each and every violation averred to include the following relief and any further relief which the Tribunal may find to be justified by the evidence pursuant to the Whistleblower Acts, to so far as possible eliminate the discriminatory effects of the past and bar like discrimination in the future, to protect not only Mr. Kaufman's interests but also to serve the public interest in assuring future exposure of threats to public health and safety:

1. An order requiring the Respondent to take such affirmative action to abate the violation as the Tribunal deems appropriate;
2. An order requiring retroactive promotion to the position or a comparable position that Mr. Kaufman would have occupied but for the discrimination and retaliation;

3. An order requiring the Agency to create an ombudsman office that has programmatic functions and is consistent with standards of practice adopted by the Ombudsman Committee of the American Bar Association and the U.S. Ombudsman Association incorporated the core principles of independence, impartiality, and confidentiality.
4. An order requiring Respondent to prominently post the findings of wrongdoing found by this Tribunal in all divisions of the national and regional EPA offices, including all research laboratories;
5. An order requiring Agency officials to cease from making negative comments regarding Mr. Kaufman's performance as an EPA employee to the press and all elected officials, and generally from harassing him and retaliating against him;
6. An order requiring the Administrator of the Agency to send a letter to all members of the United States Congress to whom Agency officials made negative statements about Mr. Kaufman since 1999 which describes the finding of wrongdoing by this Tribunal, and which specifically retracts all such negative comments with specificity as to each comment;
7. A monetary judgment requiring Respondent to pay to Mr. Kaufman the compensation (including back pay), terms, conditions, and privileges of his employment in an amount determined by the Tribunal;
8. A monetary judgment requiring Respondent to pay to Mr. Kaufman an amount in compensatory damages to be proven at the hearing hereof in a further amount determined by the Tribunal;
9. A monetary judgment requiring Respondent to pay to Mr. Kaufman an additional amount in punitive damages in a further amount determined by the Tribunal;

10. A monetary judgment requiring Respondent to pay Mr. Kaufman tax enhancements related to any monetary judgments awarded in a further amount determined by the Tribunal;
11. A monetary judgment requiring Respondent to pay to Mr. Kaufman prejudgment interest on any amount of damages recovered in a further amount determined by the Tribunal;
12. An award equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) in a further amount determined by the Tribunal that were reasonably incurred by Mr. Kaufman for, or in connection with, the bringing of the complaint upon which the order issues, including fees and costs associated with Mr. Kaufman's proceeding *pro se*.

Respectfully submitted,

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Attachments:
CD-Rom Containing Exhibits
CD-Rom of the June 5, 2000 Tarpon Springs, FL Hearing