To: Ostrander, David[Ostrander.David@epa.gov]
From: Ferguson, Ralph
Sent: Tue 9/22/2015 11:20:08 PM
Subject: Re: PRESS RELEASE: Westerman Files Complaint Against EPA Over Gold King Mine Disaster

And here is his official card.

Colorado Department of Regulatory Agencies
Division of Professions and Occupations
d of Licensure for Architects, Professional Engineers and Professional Lanc

Elliott Burton Petri

Professional Engineer

PE.0049511	12/29/2014
Number	**Issue Date**
Active	10/31/2015
Credential Status	**Expire Date**

Verify this credential at: www.dora.colorado.gov/professions

Division Director: Lauren Larson Credential Holder Signature

Ralph Ferguson
ICP-GKM FSC
US Environmental Protection Agency
Office: 214-665-2147

Cell: 469-978-6201
ferguson.ralph@epa.gov

On Sep 22, 2015, at 4:34 PM, Ostrander, David <Ostrander.David@epa.gov> wrote:

Sorry to be such a pain. HQ is nervous about complete accuracy as this is going to a congressman in response to his allegations we were in violation of state laws.

From: Ferguson, Ralph
Sent: Tuesday, September 22, 2015 4:32 PM
To: Ostrander, David
Cc: Way, Steven
Subject: Re: PRESS RELEASE: Westerman Files Complaint Against EPA Over Gold King Mine Disaster

David,

Elliot was on the team and at the site during the release. I have also attached his business card.

<image001.jpg>

Ralph Ferguson
ICP-GKM FSC
US Environmental Protection Agency
Office: 214-665-2147
Cell: 469-978-6201
ferguson.ralph@epa.gov

On Sep 22, 2015, at 4:29 PM, Ostrander, David <Ostrander.David@epa.gov> wrote:

And confirm he was on the team and at the mine site?

From: Ferguson, Ralph
Sent: Tuesday, September 22, 2015 4:27 PM

To: Ostrander, David
Cc: Way, Steven
Subject: Re: PRESS RELEASE: Westerman Files Complaint Against EPA Over Gold King Mine Disaster

Great thanks David. I have his business card if you want a snapshot of it.

Ralph Ferguson
ICP-GKM FSC
US Environmental Protection Agency
Office: 214-665-2147
Cell: 469-978-6201
ferguson.ralph@epa.gov

On Sep 22, 2015, at 4:20 PM, Ostrander, David <Ostrander.David@epa.gov> wrote:

I just looked him up online and confirmed. thanks

From: Ostrander, David
Sent: Tuesday, September 22, 2015 4:15 PM
To: Way, Steven; Ferguson, Ralph
Subject: FW: PRESS RELEASE: Westerman Files Complaint Against EPA Over Gold King Mine Disaster

One last confirmation about Elliot Petri having an engineering license with the state of Colorado and he was part of the response team. (he was taking the video).

thanks

From: Deitz, Randy
Sent: Tuesday, September 22, 2015 3:53 PM
To: Ostrander, David; Mahmud, Shahid; StClair, Christie
Cc: Stalcup, Dana; Bressler, Lindsey; EOC OGC; Tyner, Lee; Cohen, Nancy; Bassler, Rachel; EOC Solid Waste; Salo, Earl; Purchia, Liz; EOC_Manager,; Openchowski, Charles; Williams, Laura
Subject: RE: PRESS RELEASE: Westerman Files Complaint Against EPA Over Gold King Mine Disaster

As long as we are CERTAIN, that one of our site workers was an engineer licensed by the state Colorado, I am fine with saying something like –

Based upon EPA's 3 decades of experience cleaning up waste sites through our Superfund response program, an interdisciplinary approach is needed to clean up sites, including engineering, construction, and other disciplines. Regarding Rep. Westerman's question about occupational licensing, EPA did have an engineer licensed by the state of Colorado working on the response.

Randy Deitz

Attorney Advisor

Office of Solid Waste and Emergency Response

(202) 566-0197

From: Ostrander, David
Sent: Tuesday, September 22, 2015 5:34 PM
To: Mahmud, Shahid; StClair, Christie
Cc: Stalcup, Dana; Deitz, Randy; Bressler, Lindsey; EOC OGC; Tyner, Lee; Cohen, Nancy; Bassler, Rachel; EOC Solid Waste; Salo, Earl; Purchia, Liz; EOC_Manager,; Openchowski, Charles; Williams, Laura
Subject: RE: PRESS RELEASE: Westerman Files Complaint Against EPA Over Gold King Mine Disaster

Shahid brings up some really good points. I would still like to get confirmation of others' qualifications and prepare something like below describing the interdisciplinary team who were working on this site.

From: Mahmud, Shahid
Sent: Tuesday, September 22, 2015 3:22 PM
To: StClair, Christie; Ostrander, David
Cc: Stalcup, Dana; Deitz, Randy; Bressler, Lindsey; EOC OGC; Tyner, Lee; Cohen, Nancy; Bassler, Rachel; EOC Solid Waste; Salo, Earl; Purchia, Liz; EOC_Manager,; Openchowski, Charles; Williams, Laura
Subject: Re: PRESS RELEASE: Westerman Files Complaint Against EPA Over Gold King Mine Disaster

Christie,

We need to be really careful in preparing a simple yes/no response. I think part of our response should describe the type of expertise that is needed for work like this and at a site like this. It is an old mine, so folks are clearly jumping to the conclusion that a mining engineer is what would be needed. However, we weren't building a mine - we were investigating this site and planning work to mitigate the risk the site posed to public health and environment. So in addition to mining engineers who would be helpful in terms of understanding the site, we would actually need an inter-disciplinary team that may include a mining engineer involved, civil engineers, environmental engineers, geologists hydrologists, construction workers and managers. I'm not sure what would have been produced that would have been stamped by an engineer in this case. However, contractors doing the work onsite wouldn't be PE's but would be licensed for the type of construction work they are doing. The contractors work is directed by qualified EPA/State Project managers who have directed this type of work in the past. Thanks!

Shahid Mahmud
Team Leader
EPA Abandoned Mine Lands Team
703-603-8789

From: StClair, Christie
Sent: Tuesday, September 22, 2015 5:08 PM
To: Ostrander, David
Cc: Stalcup, Dana; Deitz, Randy; Bressler, Lindsey; EOC OGC; Tyner, Lee; Mahmud, Shahid; Cohen, Nancy; Bassler, Rachel; EOC Solid Waste; Salo, Earl; Purchia, Liz; EOC_Manager,; Openchowski, Charles; Williams, Laura
Subject: Re: PRESS RELEASE: Westerman Files Complaint Against EPA Over Gold King Mine Disaster

To be clear, was that contractor involved in the work plan and was he at the site?

Christie St. Clair

Office of Public Affairs

Environmental Protection Agency

o: 202-564-2880

m: 202-768-5780

On Sep 22, 2015, at 4:57 PM, "Ostrander, David" <Ostrander.David@epa.gov> wrote:

Our START contractor working this project is a licensed engineer in Colorado. I am checking on the state DRMS personnel who consulted on this project. I believe they are licensed engineers as well, but need to verify.

Thanks

From: StClair, Christie
Sent: Tuesday, September 22, 2015 2:28 PM
To: Stalcup, Dana
Cc: Deitz, Randy; Bressler, Lindsey; EOC OGC; Tyner, Lee; Mahmud, Shahid; Cohen, Nancy; Bassler, Rachel; EOC Solid Waste; Salo, Earl; Purchia, Liz; EOC_Manager,; Openchowski, Charles; Ostrander, David; Williams, Laura
Subject: Re: PRESS RELEASE: Westerman Files Complaint Against EPA Over Gold King Mine Disaster

Plus Charles, David and Laura so we are all on the same page.

The language currently in play is: "Agency staff and contractors were operating as we do at all Superfund sites, and incorporated engineering, mining and hydrogeological expertise from EPA, the

State of Colorado, and other stakeholder groups.

Looking for agreement or alternatives, please.

Christie St. Clair

Office of Public Affairs

Environmental Protection Agency

o: 202-564-2880

m: 202-768-5780

On Sep 22, 2015, at 4:08 PM, "Stalcup, Dana" <Stalcup.Dana@epa.gov> wrote:

> Seems to me that that response would generate additional questions that we should be prepared to answer. I also think it would not be too well received – it seems to avoid the question by saying "trust us". I think it would be better to say the same thing but in a little more expansive way, if we can come up with the language: they were operating as we do at all Superfund sites, and incorporated engineering and hydrogeological expertise from EPA, the State, and other support groups. If something like that is accurate – probably need to confirm with the Region.
>
> Just a suggestion….
>
> Dana Stalcup
>
> Director, Assessment and Remediation Division
>
> OSWER/Office of Superfund Remediation and Technology Innovation (OSRTI)
>
> Desk – 703-603-8702

Cell – 202-309-5473

From: StClair, Christie
Sent: Tuesday, September 22, 2015 4:01 PM
To: Deitz, Randy
Cc: Bressler, Lindsey; EOC OGC; Tyner, Lee; Stalcup, Dana; Mahmud, Shahid; Cohen, Nancy; Bassler, Rachel; EOC Solid Waste; Salo, Earl; Purchia, Liz; EOC_Manager,
Subject: Re: PRESS RELEASE: Westerman Files Complaint Against EPA Over Gold King Mine Disaster

Randy,

Charles Openchowski and I discussed, and he suggests we might say, "The team was fully qualified to do the work" and leave it there.

Does that work from your perspective?

Earl or Lee, your thoughts?

Christie

Christie St. Clair

Office of Public Affairs

Environmental Protection Agency

o: 202-564-2880

m: 202-768-5780

On Sep 22, 2015, at 2:17 PM, "Deitz, Randy" <Deitz.Randy@epa.gov> wrote:

Again, I am not sure whether any EPA or state of Colorado personnel who reviewed the workplan had acquired state of Colorado PE licenses. I am relatively certain that Congress, under the CERCLA statute, did not require EPA to acquire state or local permits or licenses given the national nature of the Superfund program and given the comprehensive procedural requirements found in CERLCA and the National Contingency Plan (NCP). But I would like Lee Tyner or Earl Salo in OGC to weigh in on this issue.

Randy Deitz

Attorney Advisor

Office of Solid Waste and Emergency Response

(202) 566-0197

From: Bressler, Lindsey
Sent: Tuesday, September 22, 2015 2:01 PM
To: StClair, Christie; EOC OGC; Tyner, Lee; Stalcup, Dana; Mahmud, Shahid; Deitz, Randy; Cohen, Nancy; Bassler, Rachel; EOC Solid Waste
Cc: Purchia, Liz; EOC_Manager,
Subject: RE: PRESS RELEASE: Westerman Files Complaint Against EPA Over Gold King Mine Disaster

Hi all,

Below is a transcript of Administrator McCarthy's responses to questions about engineering from Rep. Bruce Westerman (R-Arkansas), Jody Hice (R-Texas) and Scott Tipton (R-Colorado) in the House Oversight & Government Reform Committee and House Natural Resources Committee Joint Hearing on September 17. Answers are a transcript, questions are summarized by me.

Link to the video: http://www.c-span.org/video/?328136-1/epa-administrator-gina-mccarthy-testimony-gold-king-mine-wastewater-spill

Jody Hice, R-Texas

Is the expertise limited to internet resources at Google?

"The On Site Coordinator has extensive mining and engineering expertise and we worked with the Colorado Division of Reclamation in Mining and Safety who have considerable as well, including in that area."

Bruce Westerman, R-Arkansas

Would the activities conducted at the GK site require engineering design?

"I'm sorry sir, I don't know whether I'm qualified to answer that question but I'll certainly respond if you'd like me to.

Do you agree that the activities conducted at the GK site require engineering design work?

"I'm well aware that there was a work plan involving a significant number of engineering expertise. What you asked me was the exact actions at the site. I'm not prepared to answer that portion of the question."

You said that the OSC had significant mine engineering experience and that there was significant expertise involved in the plan?

“That was my understanding.”

“Yes, that’s correct.”

Did a professional engineer design or stamp drawings at the Gold King site?

“I’m happy to follow up on that, I can’t that answer the question at this time.”

Who is this person [the OSC coordinator]?

“I don’t have his individual name sir.”

Do you know his credentials?

“I don’t have his bio in front of me, sir, but I do know that the work plan itself wasn’t developed at the site. It was developed with the State of Colorado after significant public input from the Animas River Stakeholders Group.”

You should have had a professional design person in charge of this to stamp the drawings.

“I am suggesting I can’t answer your question at this point but I am happy to follow up.”

Scott Tipton, R-Colorado

How many mining engineers does EPA employ?

"I can't answer that right now sir."

Do you know if there are any?

"I know we have a mining team that works on these issues."

From: StClair, Christie
Sent: Tuesday, September 22, 2015 12:58 PM
To: EOC OGC; Tyner, Lee; Stalcup, Dana; Mahmud, Shahid; Deitz, Randy; Cohen, Nancy; Bassler, Rachel; EOC Solid Waste
Cc: Purchia, Liz; EOC_Manager,; Bressler, Lindsey
Subject: Fwd: PRESS RELEASE: Westerman Files Complaint Against EPA Over Gold King Mine Disaster

OSWER folks, any thoughts? Are we able to say whether there were licensed engineers involved in the work plan - or characterize the level of expertise as appropriate for the project?

And Lindsey, please pull from the hearing transcript what the administrator said in response to this question and send to this group.

Christie

Christie St. Clair

Office of Public Affairs

Environmental Protection Agency

o: 202-564-2880

m: 202-768-5780

Begin forwarded message:

From: "Lyon, John" <jlyon@arkansasnews.com>
Date: September 22, 2015 at 12:47:49 PM EDT
To: Press <press@epa.gov>
Subject: Fwd: PRESS RELEASE: Westerman Files Complaint Against EPA Over Gold King Mine Disaster

Would the agency care to comment on the allegation below by U.S. Rep. Bruce Westerman that no Colorado-licensed engineer was involved in the Gold King Mine reclamation project and that this violated Colorado law?

John Lyon, reporter

Arkansas News Bureau
501-786-4306

---------- Forwarded message ----------
From: **Representative Bruce Westerman**
<AR04BWIMA@mail.house.gov>
Date: Tue, Sep 22, 2015 at 10:56 AM
Subject: PRESS RELEASE: Westerman Files Complaint Against EPA Over Gold King Mine Disaster
To: jlyon@arkansasnews.com

News from Congressman Westerman

Westerman Files Complaint Against EPA Over Gold King Mine Disaster

FOR IMMEDIATE RELEASE
September 22, 2015

Westerman Files Complaint Against EPA Over Gold King Mine Disaster

FOR IMMEDIATE RELEASE
September 22, 2015
Contact: Ryan Saylor – (202) 225-3772; ryan.saylor@mail.house.gov

WASHINGTON – On Monday (September 21), **Congressman Bruce Westerman (AR-04)** filed an official complaint with the Colorado Department of Regulatory Agencies, Division of Professions and Occupations, regarding the August 5, 2015 **Gold King Mine disaster**.

Westerman, a professional engineer, said he believed the Environmental Protection Agency had been involved in the "practice of engineering" as defined by Colorado state law and were not competent or licensed to practice engineering.

"Because the EPA has not demonstrated a Colorado licensed professional engineer was engaged during the planning and design stages nor part of the Site Removal Team that was responsible for the Gold King Mine spill, the EPA was in direct violation of the Colorado statute, and should be subject to the same consequences any other entity in violation of this law would face." **Westerman's complaint said.** "I believe the spill could have been prevented, or at the very least, significantly mitigated, if the EPA had followed the engineering practice laws established to safeguard life, health, and property and to promote the public welfare."

He went on to say the "EPA's own review affirms my belief that those conducting the work had not adequately designed a reclamation plan that safeguarded life, health, and property causing significant damage to public resources. A licensed professional engineer would have reviewed risk factors and carefully designed an appropriate solution in order to avoid such an incident."

The Gold King Mine disaster was caused after workers at the site near Silverton, Colorado, unearthed an underground chamber sending toxic waste into nearby waterways. Three million gallons was spilled as a result, polluting rivers in Colorado and New Mexico.

During questioning under oath, EPA Administrator Gina McCarthy avoided answering Westerman's questions regarding the use of engineers in the design phase of the Gold King Mine reclamation undertaken by the EPA.

"Because the EPA and EPA Administrator McCarthy have repeatedly avoided answering whether a licensed engineer was involved in the planning process or was present at the mine when the incident occurred and have also failed to provide any engineering drawings or design documents, I am filing this complaint to spur the EPA into action and to prevent another incident like this from occurring," **Westerman said. "**The EPA is not above the law and they, nor any other federal agency, should blatantly ignore state laws put in place to safeguard life, health, and property and

to promote public welfare."

A member of the House Committee on Natural Resources and the House Committee on Space, Science, and Technology, Westerman is a professional engineer with over 22 years of private engineering practice.

Document: Division of Professions and Occupations Complaint Form (.pdf)
Document: Official Complaint with Colorado Department of Regulatory Agencies, Division of Professions and Occupations (.pdf)
Video: EPA Administrator McCarthy Can't Answer Questions from Congressman Bruce Westerman (YouTube)

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