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Unsealed files cite allegations of fraud

Court opens records in Tar Creek civil case

(By Gary Garton)

MIAMI, Okla. - Documents unveiled in a civil suit filed by a Tar Creek whistle-blower reveal a wide range of allegations against contractor Morrison-Knudsen Corp., including an instance in which lead-contaminated dirt allegedly was scraped away at a yard in Cardin and then put back.

David Lovelace, in an interview with the Globe, said trying to keep the Tar Creek cleanup work "clean" has become something of a personal crusade, though a relatively quiet one.

Lovelace, who is a chemist and environmental consultant, and six other employees of Morrison-Knudsen reported in 1999 alleged fraud and mismanagement in the Superfund work being done by the company.

The Colorado company had a \$12.1 million contract with the U.S. Environmental Protection Agency for the replacement of lead-contaminated soil in residential yards, school grounds and other public-access areas in Picher, Cardin, Quapaw, Commerce and North Miami.

After the whistle-blower report to federal authorities, the FBI shut down the Morrison-Knudsen operation in the summer of 2000. Since then, the company's work has been the subject of an investigation by the EPA, FBI and other federal agencies.

Lovelace and his colleagues were fired by the company, and have since filed a civil lawsuit in U.S. District Court at Tulsa. The suit was filed in an attempt to obtain a whistle-blowers reward under a program set up by Congress several years ago.

No criminal charges have been filed against the company. Assistant U.S. Attorney Ken Snoke declined to comment this week on the status of the investigation. Files in the civil lawsuit unsealed by the court refer to "criminal proceedings."

The documents now open to the public in the case include these allegations:

The company falsified time slips for truck drivers showing work not actually done and for personnel who were not employed by the contractor.

The company used drivers who were not certified to handle hazardous waste while falsifying truck logs to indicate they were and billing the government for the higher pay rate for certified drivers. In 2002, a Bartlesville trucking company was indicted for allegedly obtaining falsified certification papers for its drivers through a Tulsa company.

The company dumped lead-contaminated soil in areas not designated for the disposal.

In one instance, drivers took contaminated soil from the yard at a Cardin residence, then returned it to the same yard as if it were clean replacement soil.

The company falsified air-monitoring results to avoid having its work stopped.

The company falsified accident reports to make them appear less serious than they were and

falsified safety-training reports to obtain incentive bonuses.

Workers improperly installed barrier mats on top of contaminated soil.

The company used cheaper clay rather than more expensive topsoil to replace contaminated dirt that was removed from yards. That practice has caused flooding of homes because of improper drainage, and more than 150 complaints from property owners about the faulty work.

The EPA has continued to settle those complaints and in some instances has ordered its current contractor, CH2M Hill, to redo the original work.

After the unsealing of the court records, a spokesman for the former Morrison-Knudsen company, now called the Washington Group and based in Idaho, issued a statement. The statement said the company had investigated the original reports of alleged fraud and found them to be "baseless and without merit."

The statement said the Washington Group "has been completely open, forthright and cooperative with the federal government every step of the way. ... The Army Corps of Engineers has acknowledged there has been a decline of over 50 percent in the blood lead levels of children in the area."

The law firm of McKinney & Stringer, with offices in Tulsa and Oklahoma City, filed the suit against Morrison-Knudsen under the federal False Claims Act.

Joel McNatt, a lawyer with the firm, confirmed details of the unsealed court documents but declined to discuss the case further.

Lovelace said he is "delighted" that some of the allegations in his suit have been made public. "I think people need to be aware of what has happened there, and how their tax money was used," he said.

Lovelace said he and Billy D. Freeman Jr. were working as a team for Morrison-Knudsen, testing the soil in residential yards, school grounds and other public areas to determine whether it exceeded the EPA's lead-danger level of 500 parts per million. Another team of testers would dig into the area to determine how deep the contamination extended.

Lovelace said he is under constraint from his attorneys not to discuss parts of the suit that remain under seal, but it is a relief to have some of the details available to the public.

"That was our intent, not only to report what we saw as illegal activities and inept management practices to the government, but to the public as well," he said.

Now retired, Lovelace came back to work as an independent consultant for two Miami schoolteachers who reported improper soil replacement at two schools in 2002.

Linda Tunnell and Jacque Buzzard told the Miami Board of Education that "hot spots" of lead contamination remained on the playgrounds of Nichols and Washington schools.

Those playgrounds and five other school properties had undergone cleanup by CH2M Hill after the EPA agreed to extend its cleanup work outside the Tar Creek site.

Tunnell and Buzzard said they became concerned after Hill employees left dust monitors in the school buildings for only a day. They enlisted the aid of the L.E.A.D. Agency Inc., a residents' group, to talk with the contractors and have them reinstall the dust monitors.

The teachers then hired Lovelace to conduct spot tests of the soil on the playgrounds after the

work was complete.

They reported to the school board that he found four "hot spots" on the playgrounds, ranging from 509 to 809 parts per million of lead. At another meeting, Lovelace showed the school board videotapes of what he said were incorrect and unscientific testing methods used by Hill employees at the schools.

After requests from the school administration, and while acknowledging no validity in the reports, Hill returned to do additional cleanup work on the playgrounds.

Lovelace said his attorneys have advised him not to comment on the continuing cleanup work in the Tar Creek area or the proposed cleanup alternatives being explored.

"I'm keeping abreast of developments at the site, but until our suit has been settled one way or the other, I have to keep my thoughts to myself," he said.