

FEMA'S TOXIC TRAILERS

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running, and their air conditioning units operating 24 hours per day.

A leading treatise on diagnosing indoor air quality calls testing for formaldehyde under these conditions "meaningless."

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FEMA repeatedly received

complaints from occupants about high formaldehyde levels, including at least two complaints involving the death of occupants. But the agency brushed the complaints aside. Over 100,000 families have lived in FEMA trailers and manufactured homes. Yet the leadership of FEMA refused to take even the most basic steps to protect them from toxic formaldehyde fumes.

"It is impossible to read the FEMA documents and not be infuriated."

Yesterday, FEMA finally admitted it made a mistake. It announced it would begin a program to test occupied trailers for dangerous levels of formaldehyde. This is exactly what FEMA's field staff urged over a year ago. But it took this hearing — and the prospect that Director Paulison would face tough questions— to spur FEMA to act.

FEMA exists to serve the public. But it acts as though protecting Director Paulison from embarrassment is more important than protecting the

health of the victims of Hurricane Katrina.

It is impossible to read the FEMA documents and not be infuriated. Americans don't mind paying their taxes if they get a government that works. But when that bargain is broken — and tax dollars are squandered and health jeopardized — frustration rises and trust in government erodes.

At our last hearing with Surgeon General Carmona, I said that good oversight

FEMA's Management and Oversight of Payments for Insurance Company Services Should Be Improved (report highlights)

GAO

Extraordinary recent flood events raise serious questions about the solvency of the National Flood Insurance Program (NFIP), which is administered by the Federal Emergency Management Agency (FEMA). The NFIP is largely implemented by private insurance companies that sell and service policies and adjust claims under the Write Your Own (WYO) Program. This report, prepared under the authority of the Comptroller General, examines (1) how much FEMA paid the WYO companies in recent years for operating costs and how FEMA determined payment amounts; (2) how FEMA's approach to determining operating costs assures that payments are reasonable estimates of companies' expenses; and (3) how FEMA assures that financial and management controls are in place for the WYO program and operate as intended. To do these assessments, GAO interviewed FEMA and insurance officials, and analyzed statutes, regulations, payment data, methodologies, and audits of WYO companies.

What GAO Recommends

GAO recommends that FEMA take steps to ensure that it has a reasonable estimate of actual expenses WYO companies incur to help determine payments for services and that

financial audits are performed. The Department of Homeland Security reviewed a draft of this report and generally agreed with our recommendations.

FEMA's payments to WYO insurance companies for operating costs ranged from more than a third to almost two-thirds of the total premiums paid by policyholders to the NFIP for fiscal years 2004 through 2006. In fiscal years 2005 and 2006, larger payments to WYO insurance companies were the result of settling an unprecedented number and dollar amount of claims for damages resulting from major hurricanes and flood events including Hurricane Katrina. To determine the amount of these payments, FEMA negotiated payment approaches with insurance industry representatives when it established the current WYO program in 1983 based on industry averages for operating expenses for other lines of insurance (such as homeowners, commercial, and fire), past practice, and discussion.

The approach FEMA uses to determine operating costs for WYO insurance companies, rooted in policies negotiated and established about 25 years ago, cannot ensure that payments are based on

reasonable estimates of actual expenses because actual expenses incurred by the companies for their services to the NFIP are not considered. Although it has authority to do so, FEMA does not collect data on actual WYO flood insurance expenses that could provide a basis for insuring that the WYO payments are based on a reasonable estimate of actual expenses. FEMA officials said that they have not asked WYO insurance companies to provide expense information due to concerns that the approach would increase FEMA's administrative costs and cause a decline in WYO program participation. However, some data on expenses WYO insurance companies allocate to flood insurance are available. FEMA officials said that they cannot use this information due to reporting inconsistencies. Also, there is some precedent in two similar public-private insurance partnerships for collecting actual expense information. FEMA's decision to rely on long-standing practices does not meet federal internal control standards that agencies be held accountable for, among other things, stewardship of government resources.

Biennial financial statement audits—FEMA's primary mechanism to provide assurance that it receives complete and accurate financial management information from the WYO insurance companies—were not performed

consistently as required by regulation. FEMA regulations require each participating company to arrange and pay for these audits by independent certified public accounting firms. However, many WYO insurance companies did not comply with the schedule in recent years. For example, for fiscal years 2005 and 2006, 5 of 94 participating companies had biennial financial statement audits performed. FEMA officials said they allowed some companies to delay having the audits done because they were in the process of contracting with new subcontractors to perform their financial reporting responsibilities. Nonetheless, without the required biennial audits, FEMA lacks an appropriate internal control mechanism for effective program oversight.

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The suit accuses insurance companies of pressuring engineers to falsify reports so storm damage could be blamed on flood water instead of wind, which would shift the financial burden to the National Flood Insurance Program.

Judge Unseals Katrina Damage Lawsuit

The U.S. Department of Justice is weighing whether to intervene in a lawsuit that accuses insurance companies of overbilling the federal government for flood damage from Hurricane Katrina, a judge who unsealed the case on Monday said.

A team of lawyers filed the so-called "whistleblower" suit in April 2006 on behalf of two sisters who worked for a company that helped State Farm Insurance Co. adjust policyholder claims on the Mississippi Gulf Coast after the August 2005 storm.

But the suit was legally required to remain under seal so the Justice Department could investigate and consider intervening in the case.

U.S. Magistrate Judge Robert Walker in Gulfport, Miss., ordered the case unsealed Monday, even though the federal government had argued that its disclosure would "compromise (its) ability to conduct an adequate civil investigation of this case."

"The government gives no explanation for how the investigation would be compromised by unsealing the case," Walker wrote in a one-page order.

Justice Department spokesman Charles Miller said he would not comment on the suit or the judge's ruling.

A legal team led by high-profile litigator Richard "Dickie" Scruggs filed the lawsuit on behalf of Cori and Kerri Rigsby, sisters from Ocean Springs, Miss., who worked for a company that contracted with State Farm.

State Farm, Nationwide Insurance Co., Allstate Insurance Co., USAA Insurance Co., and

several engineering firms that contracted with the companies are named as defendants in the suit.

The suit, which represents only one side of a legal argument, accuses insurance companies of pressuring engineers to falsify reports so storm damage could be blamed on flood water instead of wind, which would shift the financial burden to the National Flood Insurance Program.

The companies say their homeowner policies cover damage from wind but not rising water, including storm surge. Insurers sell separate flood insurance policies that are subsidized by the federal government.

"By employing engineering reports that reallocated losses to 'flood' instead of homeowners, State Farm, Nationwide, and other insurers essentially pushed off their responsibility to pay claims onto the federal government," the 35-page lawsuit alleges.

Zach Scruggs, Richard Scruggs' son and law partner, said that Justice Department intervention could make it a stronger case.

"I think it's going to be a strong case, either way," Zach Scruggs said. "It's their right to (intervene), but we are more than prepared and willing to litigate this on our own, on behalf of the government."

State Farm spokesman Phil Supple said: "Given that the Rigsbys have been self-proclaimed whistleblowers for more than a year, it was not surprising to see the existence of this lawsuit, which gives them a potential monetary incentive for filing it."

By MICHAEL KUNZELMAN, AP

E.A. Renfroe & Co., a Birmingham, Ala.-based insurance adjusting firm, assigned the Rigsbys to help State Farm adjust Katrina claims. The sisters quit the firm after they provided Scruggs - and state and federal authorities - with reams of internal State Farm claims records.

The sisters claim the documents show that State Farm manipulated engineering reports so claims could be denied, a charge that the Bloomington, Ill.-based insurer denies.

Renfroe sued the Rigsbys for distributing the documents. Last month, a federal judge presiding over that case in Alabama appointed two veteran attorneys to prosecute Richard Scruggs and his law firm for criminal contempt.

U.S. District Judge William Acker ruled in June that Scruggs "willfully violated" a court order requiring him to return all of the documents that the Rigsby secretly copied.

Meanwhile, the Rigsbys' suit isn't the first of its kind since Katrina hit on Aug. 29, 2005. In Louisiana, U.S. Attorney David Dugas decided against intervening in a whistleblowers' lawsuit that also accuses insurers of overbilling the NFIP for Katrina's flood damage.

An attorney for a group of former insurance adjusters filed that suit last year in federal court. A federal judge in New Orleans unsealed it in May.