

Glenn A. Fine, Inspector General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W. Suite 4706  
Washington, D.C. 20530-0001

Via fax 202 514-4001

April 5, 2006

Dear Inspector General Fine;

We are writing to you regarding the U.S. Office of Special Counsel Report in *Leroy A. Smith v. U.S. Department of Justice, Bureau of Prisons and Federal Prison Industries*, OSC File No. DI-04-2815, dated April 4, 2006 (Attachment A). Leroy A. Smith is represented by the Law Offices of Mary Dryovage and Public Employees for Environmental Responsibility (PEER). We request that the Office of the Inspector General initiate an independent investigation into the computer recycling practices at USP Atwater and the other Bureau of Prison institutions which have such operations to determine the –

- Extent of health and safety risks posed by past and present terminal recycling operations;
- Number of Bureau of prison staff and inmates who have been exposed to excessive levels of toxic metals; and
- Accountability of the Bureau of Prisons chain-of-command for decisions concerning the conduct of these operations.

We believe that such an investigation is necessary to detect and deter misconduct and to promote integrity in Department of Justice programs.

In April 2002, the Federal Prison Industries (UNICOR) began a computer recycling program of Cathode Ray Tubes (CRTs) and Central Processing Units (CPUs) at USP Atwater, a Bureau of Prisons facility. The process for recycling computer monitors involved smashing the CRTs with handheld hammers in a glass-breaking area. Mr. Smith discovered that CRTs contain high concentrations of lead, cadmium, barium and beryllium, which are identified as hazardous materials by OSHA regulations. He recommended that an assessment of potential environmental and health risks be assessed before opening the recycling facility. Every time Mr. Smith suspended glass-breaking operations, UNICOR reactivated its facility without implementing all the prescribed safety measures. CRTs were accidentally broken on a daily basis at inmate work

stations, thereby exposing workers to exposure to hazardous materials similar to those in the glass-breaking operation. Blood tests performed on the factory workers established the levels of this exposure. Appropriate steps were not taken to reduce the risk of exposure. Wipe samples on the food service tables located twenty feet from the work area established that USP Atwater allowed food to be consumed in an area exposed to toxic material, in violation of 29 C.F.R. 1910.141(g)(2). Mr. Smith discovered that BOP institutions including those located in Elkton, Ohio, Texarkana, Texas and La Tuna, Texas had CRT recycling programs with even fewer safety precautions than those in place at USP Atwater.

Mr. Smith made a number of allegations which were not fully investigated in each of the BOP facilities involved in computer recycling (glass breaking) programs, including Federal Correctional Institution (FCI) Marianna, Florida, FCI Elkton, Ohio, FCI Texarkana, Arkansas, FCI La Tuna, Texas, United States Penitentiary (USP) Petersburg, Pennsylvania, and USP Atwater, California:

- 1) No hazardous metal assessments were conducted to determine the hazards associated with the CPU's and CRT's.
- 2) No environmental impact assessments were conducted for air, water, and ground quality.
- 3) No environmental safety and health risk assessments were conducted for staff and inmate workers.
- 4) UNICOR was in noncompliance with OSHA 29 CFR 1910.1025 for lead and 29 CFR 1910.1027 for cadmium.
- 5) Residual hazardous metals that were collected during daily or weekly clean-ups were disposed of at county landfills, instead of being handled as hazardous waste according to EPA standards.
- 6) Contaminated mop heads were disposed of at county landfills and mop water would be disposed down sewage drains, which would be released into the city waste water treatment plant.
- 7) Staff, inmates, and general public were not provided respirators to protect themselves against inhaling hazardous airborne particles.
- 8) The open glass breaking operations resulted in the release of hazardous metals into the air exposing anyone working or handling CRTs, walking through the work area, and the environment.

- 9) UNICOR never properly informed staff and inmates of the hazards associated with the CPUs or CRTs nor provided them adequate training from 1994 through 2005.

Based on the documentation provided to the OSC by the BOP and Mr. Smith, the OSC found that civilian staff and inmate workers were exposed to hazardous materials, including lead, cadmium, barium and beryllium in the glass breaking area of USP Atwater and the other Bureau of Prison institutions without adequate safety precautions in violation of OSHA regulations, 29 C.F.R. § 1910.1025 App. A and § 1910.1027 App. A. Contrary to BOP Program Statement 16000.08(1)(D), even after Mr. Smith brought evidence of these violations to the attention of OSC and BOP investigators, FPI officials rarely if ever suspended glass-breaking operations in response to adverse test results and routinely neglected to implement the recommendations of both the safety staff and BOP's own Industrial Hygienist.

The Office of the Special Counsel required that the U.S. Attorney General conduct an investigation into Mr. Smith's allegations pursuant to 5 U.S.C. §§ 1213( c ) and ( d ). These responsibilities were delegated to Harley G. Lappin, Director of the Bureau of Prisons. A report was submitted to the OSC on June 13, 2005 and a supplemental report was submitted on August 4, 2005. The OSC found that "the agency's account of events surrounding the activation and modification of operations in the recycling facility at USP Atwater appears to be inconsistent with documentary evidence." OSC further found that "when made aware of the potential safety hazards associated with computer recycling, Federal Prison Industries and BOP officials impeded steps to determine the scope of these hazards and refused to implement recommended precautionary measures. Moreover, the OSC report stated:

The documents do not reflect active engagement of local and national FPI and BOP staff in a cooperative effort to address the safety concerns associated with CRT recycling, as the agency maintained in its reports. Yet, the agency's reports made little effort to explain why this documentary evidence is unreliable or how this evidence can be reconciled with the conclusions of its investigation. This failure to address and explain the extensive body of countervailing evidence would alone make the agency's report unreasonable within the meaning of 5 U.S.C. § 1213(e).

The OSC report also makes clear that the FPI and BOP engaged in intimidation of Mr. Smith, including instructions that he not contact OSHA regarding these issues after repeated efforts to recommend steps be taken by his chain of command. OSC found that the agency used "strained interpretations of applicable rules and procedures in order to justify past actions" and that "the agency's investigation into conditions in recycling facilities at other BOP institutions appears to have been cursory at best."

For these reasons, we respectfully request that you examine the OSC findings in this case, with

particular attention to instances where OSC concluded “that many of the agency’s findings are inconsistent with available evidence.”

Under these circumstances, an independent investigation into the scope of past and present dangers in FPI’s computer recycling facilities is warranted. We also strongly urge that a determination of the appropriate remedial measures for staff and inmate workers who may have been exposed to toxic materials inside those facilities be undertaken.

If you have questions or concerns, do not hesitate to contact us.

Sincerely,

Jeff Ruch  
PEER Executive Director

Mary Dryovage  
Law Offices of Mary Dryovage