



U.S. OFFICE OF SPECIAL COUNSEL

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April 3, 2006

Mr. Leroy A. Smith, Jr.  
c/o Mary Dryovage, Esq.  
600 Harrison St., Suite 120  
San Francisco, CA 94107

Re: OSC File No. DI-04-2815

Dear Mr. Smith:

We have completed our review of the agency's reports and your comments regarding your disclosure of violations of law, rule, or regulation, abuse of authority, and a substantial and specific danger to public health and safety by employees at the Federal Bureau of Prisons (BOP), United States Penitentiary, Atwater, California (USP Atwater), and Federal Prison Industries, Inc. (FPI). Specifically, you alleged that factory and warehouse workers in the computer recycling facility at USP Atwater and other BOP institutions were being exposed to hazardous materials, including lead, cadmium, barium, and beryllium, without adequate safety precautions. You further alleged a violation of 29 C.F.R. § 1910.141 insofar as the computer recycling facility at USP Atwater contained a food service area that was exposed to the factory floor and toxic contaminants. Finally, you alleged abuses of authority by USP Atwater and UNICOR personnel who, in contravention of BOP Program Statement 1600.08(1)(D), regularly ordered the reactivation of operations in the computer recycling facility without implementing the safety measures you prescribed and without your written authorization.

The Office of Special Counsel required the U.S. Attorney General to conduct an investigation into your allegations pursuant to 5 U.S.C. § 1213(c) and (d). The Attorney General delegated responsibility for investigating these allegations to Harley G. Lappin, Director of the Bureau of Prisons. Director Lappin produced a report to OSC on June 13, 2005, and in response to a request for additional information, BOP filed a supplemental report with OSC on August 4, 2005. OSC forwarded the agency's initial and supplemental reports to you for comment. You submitted to OSC voluminous comments disputing many of the findings contained in the agency's reports as well as extensive documentary evidence in support of your contentions. In addition, you submitted an Executive Staff Paper summarizing your dispute with the agency's findings.

Having reviewed the agency's submissions and your comments, the Special Counsel has determined that the agency's reports, taken together, contain all of the information required by statute, but he also concluded that the findings contained in those reports appeared unreasonable. In particular, the agency's reports made little effort to explain why documentary evidence that appears to contradict the agency's findings is unreliable or how this evidence can be reconciled with the conclusions of its investigation. Moreover, the agency's reports appear to rely on strained interpretations of applicable rules and procedures in order to justify past actions in

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connection with FPI recycling facilities, and the agency's investigation into conditions in recycling facilities at other BOP institutions appears to have been cursory at best. In light of these and other deficiencies, the Special Counsel found the agency's reports unreasonable within the meaning 5 U.S.C. § 1213(e)(2), and underscored the continuing need for a thorough, independent, and impartial investigation into recycling activities at BOP institutions.

As required by law, 5 U.S.C. § 1213(e)(3), the Special Counsel has sent a copy of the agency's reports and your comments to the President and the Chairmen of the Senate and House Committees on the Judiciary. We have also filed copies of the reports and comments in our public file and closed the matter.

Sincerely,



Matthew C. Glover  
Attorney, Disclosure Unit

Enclosure

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