U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

June 13, 2005

The Honorable Scott J. Bloch
Special Counsel
Office of the Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: OSC File No. DI-04-2815; ALLEGED VIOLATION OF LAW, RULE, OR REGULATION AND SPECIFIC DANGER TO PUBLIC HEALTH OR SAFETY AT THE FEDERAL PRISON INDUSTRY FACTORY, ATWATER, CALIFORNIA

Dear Mr. Bloch:

I am in receipt of your correspondence wherein you conclude that allegations raised by an employee of the United States Department of Justice, Federal Bureau of Prisons (BOP), constitute a substantial likelihood that a violation of law, rule, or regulation and a substantial and specific danger to public health or safety has occurred. Specifically, Leroy A. Smith, Jr., an employee and Safety Manager of the United States Penitentiary in Atwater, California (USP Atwater), has made allegations related to health and occupational safety violations in a Federal Prisons Industries (FPI) factory at USP Atwater. Mr. Smith also alleged that he suffered retaliation by USP Atwater executives for reporting the violations to the appropriate authorities. The Office of Special Counsel requested an investigation and report on the allegations made by Mr. Smith. Please accept this correspondence as a summary of our investigation and findings.

Sincerely,

Harley G. Lappin
Director

Federal Bureau of Prisons Office of Internal Affairs (OIA)

OIA Case Number 2005-00010
OSC Case Number DI-04-2815

Report of Investigation

June 13, 2005

Subject: ALLEGED VIOLATION OF LAW, RULE, OR REGULATION AND SPECIFIC DANGER TO PUBLIC HEALTH OR SAFETY AT THE FEDERAL PRISON INDUSTRY FACTORY, ATWATER, CALIFORNIA

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Preliminary Statement

1. This investigation commenced in December 2004, upon receipt of an Office of Special Counsel (OSC) letter tasking the Bureau of Prisons to conduct an investigation pursuant to 5 USC §1213.

2. The OSC is an independent federal agency whose primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistle blowing. The OSC also serves as a channel for federal workers to make allegations of: violations of law; gross mismanagement or waste of funds; abuse of authority; and a substantial and specific danger to the public health and safety.

3. Reports of investigations conducted pursuant to 5 USC §1213 must include: (1) a summary of the information with respect to which the investigation was initiated; (2) a description of the conduct of the investigation; (3) a summary of any evidence obtained from the investigation; (4) a listing of any violation or apparent violation of any law, rule, or regulation; and (5) a description of any action taken or planned as a result of the investigation, such as changes in agency rules, regulations or practices, the restoration of any aggrieved employee, disciplinary action, and referrals to the Attorney General of evidence of criminal violations.

Information Leading to the OSC Tasking

4. The United States Penitentiary (USP) Atwater is a federal penitentiary located in Atwater, California. Located inside the facility is a Federal Prison Industries (FPI) factory. The factory employs eight federal employees and approximately 117 federally convicted inmates. The factory mission is the

recycling of electronic components. One component of the recycling process involves dismantling Cathode Ray Tubes (CRTs) by manually breaking the glass CRTs in a specially designed glass breaking booth.

5. The OSC identified Mr. Leroy A. Smith, Jr., Safety Manager (GS-12), as the person who provided the OSC the information that led it to task this investigation. The OSC said Mr. Smith alleges the FPI factory began the CRT recycling process after his repeated directives that the factory perform a health and risk assessment to determine concerns associated with the release of hazardous metals contained in the monitors. The OSC said Mr. Smith told them that staff and inmates were exposed to lead, cadmium, barium and beryllium above the Occupational Safety and Health Administration's (OSHA) established limits because of the FPI's failure to perform the assessment. The OSC also said Mr. Smith reported he suffered retaliation by USP Atwater Executives for reporting the violations.

6. More specific information contained in the OSC letter and a subsequent e-mail leads to the formulation of specific allegations for our investigation:

a. Allegation 1: Mr. Smith alleges staff and inmates at USP Atwater are exposed to hazardous materials emitted from broken CRTs without adequate safeguards. Despite Mr. Smith's repeated recommendations, the recycling factory opened for operation without any assessment of potential environmental and health risks.

b. Allegation 2: Mr. Smith alleges that there is current impermissible exposure occurring within the FPI factory and warehouse, but away from the CRT breaking area.

c. Allegation 3: Mr. Smith alleges that blood tests taken in 2004 from three inmates revealed high concentrations of barium, with one of the three inmates also testing positively for cadmium. Additionally, one staff member tested by his private physician revealed the presence of cadmium in his blood.

d. Allegation 4: Mr. Smith alleges his recommendations for initial and periodic blood testing of all who come in contact with CRTs in addition to an environmental risk and health assessment by an outside firm have not been implemented.

e. Allegation 5: Mr. Smith alleges that FPI relies on specious air quality test results to justify continuance of operations in the recycling factory.

f. Allegation 6: Mr. Smith alleges the FPI factory operates an internal food service area that exposes workers to toxic material, in violation of 29 C.F.R. § 1910.141.

g. Allegation 7: Mr. Smith alleges that other FPI recycling factories have been recycling CRTs with even fewer safety precautions than those which were in place initially at USP Atwater. He alleges workers at those facilities have been exposed to hazardous materials at concentrations above the OSHA's established limits.

h. Allegation 8: Mr. Smith alleges that USP Atwater and FPI officials abused their authority by repeatedly ordering reactivation of operations in the CRT breaking area without fully implementing the safety measures prescribed by him and without his written approval.

i. Allegation 8a: Mr. Smith alleges FPI officials and USP Atwater's Warden acted in concert to discredit his safety concerns.

j. Allegation 8b: Mr. Smith alleges the Warden told him not to contact the OSHA.

k. Allegation 8c: An FPI staff member alleged that both the Atwater Factory Manager and FPI Associate Warden gave him a direct order to supervise glass breaking in Atwater's relocated booth without Mr. Smith's approval.

l. Allegation 8d: An FPI inmate worker alleged he was threatened by Atwater's FPI Factory Manager with a reduction in pay grade if he did not work in the glass breaking booth.

m. Allegation 8e: Mr. Smith alleged FPI and Atwater officials retaliated against him for reporting deficiencies and violations of regulations within the FPI factory.

Description of the Conduct of the Investigation

OIA Supervisory Special Agent Vernon Ledesma and OIA Special Agent Scott Hourigan conducted interviews with FPI and Safety staff at USP Atwater during the week of December 7, 2004. Marianne Cantwell (FPI General Counsel and BOP Environmental Executive), Jim Copps (FPI Technical Officer), John Lee (BOP National Safety Coordinator), Matthew Korbelak (BOP Industrial Hygienist), and Jeff Limjoco (Environmental Law Attorney) assisted them during interviews and provided technical expertise about FPI and Safety matters. Agents Ledesma and Hourigan

conducted interviews with FPI and Safety Staff in the BOP's Central Office during the week of January 3, 2005, with follow-up interviews of staff occurring again at USP Atwater during the week of January 10, 2005. Agent Hourigan conducted additional interviews of staff at USP Atwater during the week of May 9, 2005. Agency memoranda, BOP policy, OSHA regulations, and other relevant documents were reviewed. A tour of the USP Atwater FPI factory by investigators and consultants also occurred during the investigation.

Summary of Evidence Obtained During the Investigation

The following BOP staff and other individuals were interviewed:

1. Paul Schultz, ATW Warden
2. Richard Luna, ATW Associate Warden
3. Leroy Smith, Jr., ATW Safety Manager
4. Tom Stahley, ATW FPI Program Manager
5. Janice Aragon, ATW FPI Factory Manager
6. Angel Garcia, ATW FPI Foreman
7. Larry Novicky, BOP FPI General Manager
8. Cynthia Keidel, BOP FPI Program Manager
9. Varney Smith, BOP FPI Program Manager
10. Steve Tussey, BOP National Safety Administrator
11. Jeff Limjoco, BOP Senior Counsel, Environmental Law
12. Monica Rijos, ATW FPI Business Manager
13. Aaron Aragon, ATW FPI Program Manager
14. William Bernthold, ATW Recycling Factory Technician
15. Inmate Luis Orta, Register Number 06220-032
16. Alan Booth, ATW Associate Warden
17. Donald Moore, ATW Recycling Factory Technician
18. Louis Martin, ATW General Foreman
19. Terry Whiteside, FCI Texarkana Factory Manager
20. Robert Grieser, BOP FPI Chief Administrative Officer
21. Jesse Gonzalez, ATW Executive Assistant
22. Phil Rodriguez, ATW Safety Specialist
23. Jon Franco, ATW Medical Officer
24. Ricardo Willis, ATW Health Services Administrator
25. Richard Swete, ATW Correctional Officer
26. Michael Allison, FCI Herlong Correctional Counselor
27. Matthew Korbelak, BOP Industrial Hygienist
28. John Lee, BOP National Safety Coordinator
29. Warren Eggly, Technical Support, Labcorp, San Diego, CA
30. Janice Prudhomme, D.O.M.P.H., Department of Health Services, Occupational Health Branch, State of CA
31. William Walsh, Director, Environmental Health Services, National Loss Control Service Corporation

Other evidence:

Memoranda authored by Leroy Smith
Other BOP Memoranda, documents, notes, e-mail transactions
Personal Air Sampling Data Table for UNICOR Glass Breaking at USP Atwater (BOP National Safety Office document)
Table summary of OCCU-TEC, Inc. and Cal-Inc. test results
HEC Environmental Group, Inc. assessments
NATLSCO assessments
C&IH, Inc. assessments
Labcorp Inc. Reports
BOP OIA Case File (2005-00010)

Investigative Findings

Allegation 1:

Mr. Smith alleged that staff and inmates have been exposed to hazardous materials emitted from the broken CRTs without adequate safeguards. He claims that FPI and USP Atwater staff are not following Occupational Safety and Health Administration (OSHA) regulations and BOP policy pertaining to the protection of workers exposed to these hazardous materials. He also claims that despite his repeated recommendations, the factory opened for operation in April 2002 without any assessment of potential environmental and health risks. The OSHA regulations applicable to Mr. Smith's concerns are 29 C.F.R. 1910.1025 (lead), 29 C.F.R 1910.1000 (barium and beryllium) and 29 C.F.R. 1910.1027 (cadmium). The applicable BOP policy is Program Statement 1600.08, Occupational Health and Environmental Safety.

OSHA regulations establish permissible exposure limits (PELs) for various air contaminants including lead, cadmium, barium and beryllium. Lead, cadmium and barium are found inside the CRTs, while beryllium is found inside the power source of the computers' central processing unit. The OSHA's PELs are based on eight-hour time weighted average exposures to these materials and are set to protect workers against any deleterious health effects caused by such exposure. The OSHA also establishes an additional safeguard for lead and cadmium exposures by creating an eight-hour time weighted action level (AL). Exposure at or above the AL triggers biological monitoring requirements for each exposed worker.

Findings:

Our investigation revealed that in November 2001, Mr. Smith alerted USP Atwater FPI officials via memorandum about his concerns that factory workers would be exposed to hazardous

metals. Having limited knowledge of the specific hazards, Mr. Smith formally recommended that an environmental risk and health assessment be conducted prior to implementation of the CRT breaking program. In January 2002, Mr. Smith again reminded the same officials via memorandum of his concerns and recommended the environmental risk and health assessment.

Mr. Smith himself apparently performed a hazard assessment by reviewing Material Safety Data Sheets and other information. Based on this assessment, he recommended that workers involved in the breaking of CRTs use personal protective equipment (PPE). FPI implemented its CRT recycling program at USP Atwater on April 9, 2002 with PPE which included dust masks, gloves, boots, eye and ear protection, and kevlar sleeves.

During program implementation, USP Atwater FPI officials and Mr. Smith decided that a CRT glass breaking booth should be installed, and it was installed approximately three (3) weeks after activation of the factory. The booth was placed inside the factory rather than outside due to security concerns raised by the former Warden at USP Atwater. The booth chosen for this operation was designed for use in the painting industry to capture powder over-spray in a staged filter system. Based on information provided by the vendor from whom FPI purchased the booth, an ATW FPI official and Mr. Smith determined that the booth could serve as the CRT breaking area ventilation system and would effectively filter lead, cadmium, barium and beryllium.

On June 20, 2002, Mr. Smith used local Safety Department funds to pay for testing of the CRT breaking booth area. He did so, he reported, because USP Atwater FPI officials did not initiate testing themselves, despite his recommendations that they do so. Apparently based on tests previously conducted at FCIs Elkton and Texarkana (See Allegation 4), FPI officials viewed testing as unnecessary. Regardless, on June 27, 2002, results from personal air sampling[1] were received which revealed that the CRT breaking area exceeded the OSHA's PEL and AL limits for lead and cadmium. FPI shut down its CRT breaking operation on July 1, 2002. It was determined that, although the booth filtration system was operational, the vacuum mechanism was not sufficiently powerful and did not work as effectively as expected.

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[1] Personal air sampling is the OSHA's standard for evaluating exposure criteria. The air sampling was conducted by OCCU-TEC, Incorporated.

Although the FPI manager at USP Atwater had limited knowledge of ventilation systems in general, or the removal of air contaminants in particular, modifications were made to the booth ventilation system in an attempt to lower the levels of lead and cadmium in the air. Also, after consulting with the BOP's Industrial Hygienist on appropriate PPE, FPI took action to protect workers in the CRT breaking area by fit-testing and providing them with full-faced High Efficiency Particulate Air (HEPA) respirators. Additionally, a plastic barrier was installed to separate the CRT breaking area from the remainder of the factory. However, when FPI resumed its recycling operations on July 24, 2002, personal air samples again exceeded the OSHA's PEL and AL limits for lead and cadmium, according to test results received on August 2, 2002. FPI, again, halted its CRT breaking program after receiving these results.

This cycle of testing, shutting down, modification, opening, and re-testing continued until the booth was moved in December 2003 to an area outside of the factory floor. FPI arranged for several visits by the BOP's Industrial Hygienist to assist in those efforts. In November 2002, according to a contemporaneous memorandum, the BOP's Industrial Hygienist advised a USP Atwater Safety Specialist against resuming CRT glass breaking operations, and recommended conducting additional engineering control measures and sampling to get below the lead and cadmium PELs. According to the BOP Industrial Hygienist's contemporaneous notes, he also "advised (the BOP FPI Program Manager) that all glass breaking locations have booths that exhaust to outside (no recirculation)." The FPI Program Manager did not recall the specific November 2002 conversation, but did recall having some discussion with the BOP Industrial Hygienist about booths venting exhaust to the outside.

The results of personal air samples collected from CRT glass breaking workers during the months of June, July, September, and November 2002 showed that cadmium and lead levels exceeded the OSHA's established limits. The results of personal air samples collected in January 2003 showed cadmium levels above the OSHA's established AL. Finally, the results of personal air samples collected in February 2003 showed that workers were exposed to cadmium above the OSHA's PEL and AL limits, and also, according to one sample collected from a CRT worker, to beryllium above the PEL limit.

Approximately one year later, a personal air sample collected from a CRT worker in February 2004, showed evidence of exposure to cadmium above the OSHA's PEL and AL limits. This appears to have been the result of the inmate, at some point

prior to the test, having removed a protective flap from the ventilation system which he perceived to be in his way. The inmate was not authorized to do so.

Personal air samples were taken during testing periods beginning in September 2002 through January 2003 from four (4) inmates who worked in the factory, but outside the glass breaking booth. Results from one inmate's sample in January 2003 showed evidence of exposure to cadmium above the OSHA's AL. This particular inmate worked outside the booth directly across from the booth's exhaust location. Our investigation revealed that the booth's 3rd stage filter had not been re-inserted in the filter bank during the testing period which occurred in January 2003. As air exhausted during this period, the inmate and staff were inadvertently subjected to insufficiently filtered exhaust. The booth's filter bank was inspected after factory staff alerted the FPI Associate Warden of the presence of silvery dust in the area. It was discovered that the final stage filter was not in place, and it was replaced.

Further testing was conducted of this inmate's blood and urine as required by OSHA regulations. The inmate's cadmium urine concentration of 1.5 mcg/L was below both the OSHA's 2.0 mcg/g environmental exposure standard and the OSHA's 3.0 mcg/g occupational exposure standard. The inmate's cadmium blood concentration of 4.0 mcg/L exceeded the OSHA's environmental exposure range for smokers (0.6 - 3.9 mcg/L), but did not exceed the OSHA's occupational exposure standard of 5.0 mcg/L. Institution medical staff confirmed the inmate to be a smoker. Finally, the inmate's personal air sample reading of .0033 mg/M3 exceeded the OSHA's cadmium AL of .0025 mg/M3 for cadmium.

Between January 2004 and September 2004, personal air samples were taken from fifteen (15) inmates who worked in the factory, but outside the CRT breaking area. All results were below the OSHA's PEL and AL limits for lead, cadmium, barium and beryllium.

BOP Program Statement 1600.08, Occupational Health and Environmental Safety, provides guidance on actions to be taken in situations concerning the use of ventilation systems to remove air contaminants. Specifically, the Industrial Ventilation manual published by the American Conference of Governmental Industrial Hygienists is required to be used as a guide to determine proper measurement and design of the ventilation system. However, it is apparent neither Mr. Smith nor the FPI manager consulted this section of the policy, reviewed the manual, or possessed adequate experience or training to assess

the effectiveness or ineffectiveness of efforts at physically modifying the booth. Although FPI program managers at BOP Headquarters had limited knowledge of ventilation systems in general, and of the removal of air contaminants in particular, they also provided additional recommendations for modifications to the ventilation system, and several attempts were made to fashion engineering controls for lead and cadmium levels. Ultimately, no system proved effective until the booth was moved outside the factory floor in December 2003, air permits from relevant environmental regulators were received, and the filtered air exhausted to the outdoors.

Finally, memoranda written by Mr. Smith suggested that FPI did not shut down glass breaking operations promptly when problems were evident during the testing periods. Testimonial evidence was that recycling operations were shut down whenever bad test results were received. For example, OCCU-TEC collected personal air samples on November 4, 2002. According to the USP Atwater FPI Associate Warden, operations continued until November 18, 2002, when test results were received which indicated lead and cadmium levels above the OSHA limits. With regard to the circumstance in January 2003 described above when it was discovered a third stage filter was missing from the ventilation system, silvery dust emissions were observed by staff and inmates at that time. In this case, a preponderance of testimonial evidence from staff did indicate that the operation was not shut down for at least a few days following that discovery. (Coincidentally, OCCU-TEC was collecting personal air samples on the day, January 21, 2003, when the silvery dust emissions were observed and the filter was promptly replaced. The results of that testing, received approximately one week later, showed cadmium levels above the OSHA's established AL, as reported above. Thus, it is unknown whether operations were subsequently shut down due to the observance of the silvery dust emissions or, as was the practice at the USP Atwater factory, because bad test results were received.)

Conclusion:

CRT and factory workers were exposed to the hazardous materials lead and cadmium for a period of approximately eighty (80) days immediately after factory activation, as well as during some intervals when reengineering and additional testing occurred between late July 2002 and November 2002. Subsequent personal air sample results showed that exposure to cadmium also occurred during some intervals of days through January and February 2003 reengineering/testing periods, and apparently during a brief period in February 2004. Finally, personal air sample results

from February 2003 indicated exposure to beryllium above the PEL limit during that reengineering/testing interval. These exposures are most likely attributable to or exacerbated by the absence of successful engineering controls for ventilation and filtration of the air, as well by the two additional exigent circumstances noted above (i.e., not having all filter banks in place in the ventilation system in January 2003 and the unauthorized modification to the ventilation system by an inmate worker in February 2004).

It should be noted, however, that evidence of "exposure to air contaminants" does not necessarily mean that workers actually inhaled air contaminants. Under OSHA regulations, exposure is determined by measuring air contaminants without regard to the use of respirators. The PPE worn by workers upon activation in April 2002 did not include respirators, but full-faced HEPA respirators for CRT glass breaking workers and a barrier between the glass breaking area and the rest of the factory were added prior to resuming operations in July 2002. Although the OSHA identifies respirators as the least satisfactory means of controlling exposure, the OSHA also states that respirators are capable of providing significant protection. FPI provided HEPA respirators to CRT glass breaking workers prior to resuming operations in July 2002 and has continued to do so. FPI also provided biological monitoring (blood and urine collection) since that time, including in 2004 when testing has demonstrated lead and cadmium levels far below PEL and AL limits.

Nevertheless, when workers are exposed to lead and cadmium above the PEL, the OSHA requires that change rooms, showers, and filtered air lunchrooms be provided; that food, beverages, tobacco, and cosmetics are not utilized except in these facilities; that workers be required to use these facilities whenever exposed in excess of the PEL; that medical surveillance must be performed in certain circumstances; that protective clothing be provided; that housekeeping be performed sufficiently to maintain all surfaces as free as practicable of accumulations of lead dust; that workers whose blood levels exceed a certain limit are not allowed to work in the affected areas; that training, information, and signs be provided; and that workers are notified in writing whenever personal air sampling indicates exposure above the PEL. Our investigation revealed that there were occasions when some, but not all, of the above were required and were not provided.

Listing of Actual/Apparent Violations:

During activation of the USP Atwater FPI factory and on some

subsequent occasions, CRT workers were exposed to lead and cadmium in excess of the OSHA's PEL and AL limits without appropriate engineering controls and work practice controls in violation of 29 CFR 1910.1000, 29 CFR 1910.1025 and 29 CFR 1910.1027. Specifically, when establishing the CRT booth and during periods of attempted re-engineering, feasible engineering and administrative controls were not first determined, and equipment and technical measures used were not approved for each particular use by an Industrial Hygienist or other technically qualified person. 29 CFR 1910.1000(e).

Further, appropriate employee notification was not made [29 CFR 1910.1025(d)(8), 29 CFR 1910.1027(d)(5)]; mechanical ventilation did not conform to regulations [29 CFR 1910.1025(e)(4)(ii)]; appropriate respirators were not initially used [29 CFR 1910.1025(f), 29 CFR 1910.1027(g)], although appropriate respiratory protection was implemented after the first approximately 80 days; appropriate change rooms, showers, and lunchroom facilities were not provided [29 CFR 1910.1025(i), 29 CFR 1910.1027(j)]; medical surveillance and biological monitoring for booth workers was not mandated for all CRT dismantling factories nor were instructions disseminated to them until June of 2003 [29 CFR 1910.1025(j), 29 CFR 1910.1027(l)]; and appropriate employee information, training, and signage was not provided [29 CFR 1910.1025(l) and (m), 29 CFR 1910.1027(m)].

Action Planned or Taken:

Personal air samples of workers within Atwater's dismantling factory have revealed no instances of exposure above a PEL or AL since February 2004. In December 2003, FPI officials relocated the glass breaking booth outside the factory floor and exhaust was vented to the outdoors. The relocation resulted in no additional exposures above PEL or AL levels.

Workers in the booth receive initial and annual biological monitoring to assess blood levels of lead and cadmium in their systems. Lab results are evaluated by institution medical staff to determine compliance with the OSHA's environmental and occupational exposure standards.

Workers in the booth wear full-faced HEPA respirators, kevlar gloves, coveralls and boots while in the booth. Prior to exiting the area, they are required to HEPA vacuum themselves and their suits.

Training, information and signs are now provided to all workers associated with CRT destruction/dismantling.

FPI officials also established procedures to safeguard workers against accidental breakages of CRTs. Workers are trained and directed to apply a light spray of water over the breakage of a CRT and any dust debris on the floor, prior to gently sweeping large broken glass to a centralized location. Workers then pick up the glass using a large dustpan, placing it in a small box. The box is then covered with shrink-wrap to prevent any airborne contaminants during handling and shipping to the glass breaking station. As a final response, workers use a HEPA vacuum to clean the floor of any remaining debris. Prior to returning to duty, workers are required to wash their hands and face with warm soapy water. These procedures were created by FPI officials at USP Atwater and disseminated to all other CRT dismantling facilities in September 2004.

FPI officials have also implemented a biological monitoring program (reference attached CD outlining Standard Operating Procedures, or, SOPs) to initially and annually monitor lead and cadmium levels in the blood and urine of workers assigned to the glass breaking booth, prospective workers requesting work in the booth and staff assigned to supervise the area. Blood work and urine samples are examined by laboratories and evaluated by physicians to ensure concentrations of hazardous metals do not exceed the OSHA's limits for exposure.

Disciplinary action against management officials is planned and under review at this time. Final actions will be communicated to the OSC.

Allegation 2:

Mr. Smith also alleges that there is current impermissible exposure occurring within the FPI factory and warehouse, but away from the CRT breaking area.

Findings:

In September 2004, the BOP's Industrial Hygienist, at FPI's request, conducted a technical assist visit at USP Atwater and collected personal air samples from inmates who worked outside the CRT breaking area. The results of all air monitoring were well below the OSHA action levels and PELs.

More recently, in March 2005, the OSHA conducted an inspection of the FPI recycling operation at USP Atwater in response to complaints regarding the working conditions and safety procedures. In its official response, the OSHA reported they were unable to substantiate any of the alleged violations of the OSHA's safety and health standards.

Conclusion:

There is no evidence to support the allegation of current impermissible exposure occurring within the FPI factory and warehouse.

Listing of Actual/Apparent Violations:

None

Action Planned or Taken:

The actions cited above with regard to Allegation 1, with the exception of disciplinary action, are applicable.

Allegation 3:

Mr. Smith alleges that blood tests taken in 2004 from three inmates revealed high concentrations of barium, with one of the three inmates also testing positively for cadmium. Additionally, one staff member tested by his private physician revealed the presence of cadmium in his blood.

Findings:

Our investigation revealed that the laboratory documents of blood tests taken from the three inmates reflected barium concentrations above acceptable limits. The inmates were consequently removed from their jobs inside the factory. Further investigation revealed, however, that the contract laboratory provided inaccurate information regarding the results of the tests. Specifically, the lab reports submitted by Labcorp of San Diego, California referenced the inmates' barium blood levels as ">79 Severe Elevation". This standard, according to a Labcorp report technician, was actually a reference for lead test levels rather than barium test levels. The technician elaborated that during the time of these tests, Labcorp was in the process of changing their report formatting, which resulted in the incorrect standard being referenced for the inmates' barium levels. Accurate laboratory reports submitted by the technician revealed all three inmates' blood tests were actually below the acceptable limits of laboratory references of "usually below 400 mcg/L" for barium exposure.

With respect to the inmate's positive cadmium blood test, the detected level that concerned Mr. Smith was 2.2 mcg/L. Our investigation determined the inmate was a smoker and that the OSHA's cadmium environmental exposure range for an individual that smokes is 0.6 - 3.9 mcg/L. Additionally, as this level was

also below the OSHA's cadmium occupational exposure standard of 5.0 mcg/L, FPI and medical officials saw no cause for concern regarding this inmate's test results.

The staff member with the cadmium reading provided an affidavit and laboratory report that referenced a detected level of cadmium at 0.1 mcg/L, well below the OSHA's occupational standard of 5.0 mcg/L. Based on this reading and according to the staff member, the physician directed a 30 day leave of absence from work. The staff member stated subsequent tests revealed no detectable amount of cadmium in his blood. The staff member returned to duty within the factory and undergoes annual testing to assess levels of the metals.

Listing of Actual/Apparent Violations:

None.

Action planned or taken:

Glass breaking booth workers undergo initial and annual biological monitoring to evaluate their lead and cadmium levels.

Allegation 4:

Mr. Smith urged initial and periodic blood testing of all who come in contact with CRTs in addition to an environmental risk and health assessment by an outside firm. He alleges these recommendations have not been implemented.

Findings:

Mr. Smith's recommendations in this regard have not been fully implemented. However, it is also true that they are not required by regulation or policy.

Nonetheless, in June 2003, FPI staff, with assistance from the BOP's Industrial Hygienist, developed and distributed the SOPs for CRT dismantling at all FPI CRT breaking factories. The procedures require all staff and inmates who rotate through the CRT glass breaking area to be given baseline and annual blood tests by an outside laboratory.

BOP policy instructs Safety Managers to seek guidance from the OSHA for assistance when necessary in managing industrial hygiene programs and other health hazards concerning environmental conditions present in the workplace which may cause illness or death. BOP policy also states that if the scope of the problem is beyond the expertise of the local Safety Manager,

the OSHA will provide services and guidance to federal agencies and assist them with development and implementation of occupational safety and health programs. The OSHA's Technical Services are also required to be available to agencies upon request. Unfortunately, it appears that no one from the BOP, including Mr. Smith, who had primary responsibility in this regard, ever took the prudent step of calling the OSHA for guidance prior to implementing the CRT breaking operation in 2002. (The allegation that the Warden told Mr. Smith not to contact the OSHA was precipitated by comments made at a meeting more than two years later. See Allegation 8b below.) Similarly, it appears Mr. Smith did not contact BOP Safety personnel at national headquarters prior to activation of the USP Atwater operation in 2002.

Conclusion:

It is true that FPI and Atwater officials did not contract for an environmental and health risk assessment prior to initiating operations at USP Atwater's FPI factory, but such an assessment by an outside consultant is not required. Our investigation revealed FPI officials did not see the need for an assessment by an outside consultant based on tests performed at FCIs Elkton and Texarkana, prior to Atwater's activation. Mr. Smith conducted his own hazard assessment, and USP Atwater FPI officials provided PPE to CRT workers upon activation. This was not sufficient, and it is reasonable to conclude that a risk assessment by a qualified private provider and a request for pre-operational guidance from the OSHA may have helped to prevent the exposures which occurred.

Listing of Actual/Apparent Violations:

None.

Action planned or taken:

SOPs which, among other things, address the issue of blood testing, were developed for all CRT dismantling operations and disseminated in June 2003.

Allegation 5:

Mr. Smith alleges that FPI relies on specious air quality test results to justify continuance of operations in the recycling factory. He states that FPI tested air quality in the USP Atwater factory when CRTs were not being broken and air contaminants were at their lowest, thereby enabling them to produce low test results.

Findings:

Our investigation revealed that the personal air samples obtained by Agency and other contracted companies were taken during varying and representative times of factory production.

Conclusion:

No evidence suggested that FPI manipulated production levels to produce better air quality results.

Listing of Actual/Apparent Violations:

None.

Action Planned or Taken:

None.

Allegation 6:

Mr. Smith alleges that the food service eating area inside the factory is exposed to toxic materials and violates 29 CFR 1910.141, which provides, "no employee shall be allowed to consume food . . . in any area exposed to a toxic material."

Findings:

29 C.F.R. 1910.141 defines exposure to toxic material as exposure to a substance that exceeds an applicable limit, with personal air sampling serving as the medium to assess such limits. Our investigation revealed that prior to January 2004, no personal air samples were taken from the food service eating area. Therefore, we could not determine whether the food service eating area was exposed to toxic materials prior to January 2004. However, in January, February, and September 2004, personal air samples were taken from the food service eating area and these tests were below the OSHA's PEL and AL limits for lead, cadmium, barium and beryllium. Wipe samples did show barely detectable levels of cadmium and lead on surfaces in the dining area, however.

During the course of the investigation, Mr. Smith also alleged BOP FPI officials and the former USP Atwater Warden approved the food service area to be inside the factory. Mr. Smith stated he was aware of this decision having been approved, and that he saw blueprints which showed the food service area was to be fully enclosed. Mr. Smith surmised that the food service area was not fully enclosed because of the high cost of doing so.

ATW and BOP FPI officials refuted Mr. Smith's claims in this regard. The decision to have the food service area inside and only partially enclosed, according to the ATW FPI official, was made by the former Warden based on his security concerns. Moreover, the officials denied viewing, possessing or knowing anything about blueprints which showed the food service area fully enclosed, or that budgetary reasons played a role in the decision to partially separate it. No evidence of the existence of those blueprints was discovered in the current investigation.

Conclusion:

Based on available tests which commenced in January 2004, there is no indication workers were exposed to toxic material in the food service area in violation of 29 C.F.R. 1910.141. The personal air samples did not indicate the presence of lead and cadmium exceeded an applicable limit. While it is undisputed some material made its way to the eating area, based on the wipe sample data, the personal air sample testing did not reveal amounts reached a toxic level.

Listing of Actual/Apparent Violation:

None.

Action Planned or Taken:

Based on the discovery of the barely detectable amounts of lead and cadmium in the food service area, the BOP's Industrial Hygienist recommended the food service eating area be isolated from factory operations and separately ventilated. BOP FPI officials directed FPI factories nationwide to close all internal food service operations by February 28, 2005.

Allegation 7:

Mr. Smith alleges that other FPI recycling factories have been recycling CRTs with even fewer safety precautions than those which were in place initially at USP Atwater. He alleges workers at those facilities have been exposed to hazardous materials at concentrations above the OSHA's established limits.

Findings:

Site visits to other FPI recycling factories did not occur during our investigation; rather, interviews of relevant FPI and Safety staff were used to determine when other factories opened and how and where CRT monitors were dismantled. The investigation revealed that CRT glass breaking commenced at an

FPI factory at FCI Elkton, Ohio in May of 1997. Workers at FCI Elkton broke CRTs in warehouses located outside of the factory with ball peen hammers while wearing barrier-type face masks, welder's aprons and kevlar sleeves. This method of CRT destruction was learned and observed from another non-governmental recycling company as well as a glass processing company, neither of whom conveyed any concerns with exposure to hazardous metals while breaking the glass in the CRTs. Additionally, at the request of FPI officials located at FCI Englewood, Colorado, an environmental consulting service, Chemistry & Industrial Hygienist, Inc. (C&IH) assessed the appropriateness of CRT waste (lead) for landfill disposal as early as March of 1998. C&IH reported to these officials that the representative sample of lead was not considered Resource Conservation and Recovery Act (RCRA) waste, and could therefore be deposited in a landfill. These three elements convinced FCI Elkton FPI officials to begin CRT destruction in the aforementioned manner.

In August 2001, FCI Elkton's Safety Manager sent wipe and air samples to the National Loss Control Service Corporation (NATLSCO) for an independent assessment of lead, cadmium, and beryllium concentrations associated with CRT destruction. The report identified no significant adverse findings. Also, as the volume of work increased, CRT dismantling moved inside the FCI's factory in August 2001. Shortly after this relocation, the Factory Manager complained of silvery dust accumulations, as did inmate workers. FCI Elkton's FPI Industrial Specialist relayed no cause for concern to the Factory Manager and inmate workers, based on NATLSCO's assessment of wipe and air samples. Still, a collective effort between the Safety Manager, the Factory Manager and FPI officials resulted in installation of a paint booth to better ventilate particulate matter outside the factory. In April 2003, an upgraded glass breaking booth was installed. Personal air samples were collected in May 2003, and two samples were collected in June 2004. The May 2003 results exceeded the OSHA's PEL and AL limits for cadmium. Results obtained in June 2004 did not indicate exposure above established limits.

CRT glass breaking commenced at an FPI factory at FCI Texarkana, Texas in October 2001, with workers breaking CRTs inside a room on conveyer belts over Gaylord containment boxes. FPI officials directed Texarkana staff to fit-test workers with HEPA respirators in August 2002. Personal air samples were collected in October 2002 and examined by the HEC Environmental Group, Incorporated (HEC). HEC advised FPI staff that "...personnel performing this operation are wearing appropriate personal protective equipment (PPE); therefore, the levels detected do not pose an immediate health threat to personnel

working this operation." In April 2004, a glass breaking booth with HEPA filtration was installed. Personal air samples were collected in September 2004. The September 2004 results exceeded the OSHA's AL limit for cadmium; however, workers were wearing appropriate PPE. With regard to Texarkana's adherence to FPI's SOPs issued in June 2003, the Factory Manager alerted a BOP FPI Program Manager he would not be in compliance by the date established and asked if he was to stop the booth's operation. He was informed by the Program Manager to continue production and to make progress toward the SOP goals.

FCI La Tuna briefly maintained a recycling program during four months of 2004, but no glass breaking occurred at that facility.

Conclusion:

Personal air samples taken from CRT workers at FCIs Elkton and Texarkana during months subsequent to booth installations exceeded the OSHA's limits for cadmium. Accordingly, it is reasonable to conclude that some level of exposure may have also occurred before booth installations went into effect. However, minimal testing at both facilities occurred before these installations. It appears that FPI and institution officials at both Elkton and Texarkana approached CRT destruction with what the FPI official who activated FCI Elkton's operation described as a "learn as you go" approach, relying on information from non-governmental companies and intermittent testing to guide them. Based on facts gathered during the investigation, however, there is no evidence that either factory's FPI or Safety staff intentionally or overtly placed CRT workers in harm's way.

Safety staff have assisted FPI at each of these locations, and efforts have been taken by FPI and Safety to address safety issues. The OSHA has reviewed complaints recently in April/May 2005 for both Elkton and Texarkana, and the OSHA has determined that their file on the matter can be closed and they do not anticipate any further action. In addition, in March 2004, the recycling factory at FCI Elkton received a visit from the OSHA regarding a complaint, and the OSHA investigator found no grounds for the complaint. The FPI recycling factory at FCI Texarkana has received inspection visits from Engineering & Environmental Services for Lower Colorado River Authority and Bach Training Safety & Consultation, and neither reported any negative findings.

Listing of Actual/Apparent Violations:

Workers at FCIs Elkton and Texarkana were exposed above the OSHA's limits for cadmium on two previous occasions.

Action Planned or Taken:

An examination of engineering controls, regulatory compliance and worker safeguards at all CRT dismantling factories will be completed. Outside contracted inspections of all FPI computer recycling factories are scheduled to occur during 2005.

Disciplinary action against management officials is under review at this time with regard to communication to FCI Texarkana about continuing production and making progress toward SOP goals. Final actions will be communicated to the OSC.

Allegation 8:

Mr. Smith alleges that USP Atwater and FPI officials abused their authority by repeatedly ordering reactivation of operations in the CRT breaking area without fully implementing the safety measures prescribed by him and without his written approval.

Findings:

Mr. Smith's allegation that reactivations occurred without his written approval was based on his interpretation that an imminent hazard existed in the factory. Our investigation revealed there was no imminent hazard. Specifically, air samples that exceeded the OSHA's PEL and AL presented conditions where exposed workers may experience chronic health effects as a result of exposures over time. These exposures did not, however, rise to the level of being imminently dangerous, as no immediate threat of death or serious physical harm occurred to workers when samples revealed levels exceeded the OSHA's PEL and AL. Because FPI and BOP Executives saw no imminent danger with the exposure concerns, they sought no written approval from Mr. Smith to resume operations after repetitive engineering efforts were made.

Conclusion:

FPI and Atwater officials did not abuse their authority when reactivations of factory operations occurred following efforts to better engineer the glass breaking booth.

Listing of Actual/Apparent Violations:

None.

Action taken or planned:

Relocation of the booth to a separate area with outside ventilation occurred in December 2003. This action resulted in no further exposures to workers inside the factory.

Allegation 8a:

Mr. Smith alleges FPI officials and USP Atwater's Warden acted in concert to discredit his safety concerns.

Findings:

A teleconference between BOP Safety and FPI officials, USP Atwater officials and Mr. Smith occurred in August 2004 at the direction of the Warden to Mr. Smith's immediate supervisor. The teleconference addressed Mr. Smith's interpretation that an accidental breakage of a CRT constituted a hazardous spill which would trigger emergency spill procedures. BOP Safety and FPI officials disagreed with Mr. Smith's interpretation during the teleconference. The teleconference allowed Mr. Smith's newly assigned immediate supervisor to become more familiar with oversight of the FPI operation.

Conclusion:

FPI officials and the Warden did not act in concert to discredit Mr. Smith's safety concerns. The teleconference occurred to educate Mr. Smith's immediate supervisor on FPI operations and for dialogue between Mr. Smith and FPI officials regarding the definition of hazardous spills and the application of procedures.

Listing of Actual/Apparent Violations:

None.

Action planned or taken:

None.

Allegation 8b:

Mr. Smith also alleges the Warden told him not to contact the OSHA.

Findings:

On August 3, 2004, the Warden called a meeting with the Associate Warden (Operations) and Mr. Smith to discuss institution protocol on the release of information without the Warden's knowledge. Several matters were discussed during the meeting. At some point in the discussion, Mr. Smith got up to leave the meeting and stated he was going to contact the OSHA.

Smith wrote a memorandum, dated the same day of the meeting,

in which he quoted the Warden as stating, "Come back in here and sit down, Leroy....you are not going to call OSHA or anyone else for that matter." Smith repeated this specific allegation in a memorandum dated September 30, 2004, to the Western Regional Director, and in his affidavit for the current investigation. The Associate Warden recalled the Warden directing Smith to come back in and sit down, but did not recall that he told Smith not to contact the OSHA. The Warden recalled Smith saying he was going to contact the OSHA as he (Smith) got up to leave the meeting. The Warden stated further, "I told him to make sure when he did call them that he be sure to tell them that he was the one that had developed the procedures. To this day, I don't know if he has called OSHA or not. I don't know whether I said he was not to call OSHA or not, but the context of my reply was that I wasn't done with him yet."

Conclusion:

Although the Warden and Associate Warden did not recall Smith being told specifically not to call the OSHA, the evidence suggests that a comment to that effect was made by the Warden. However, the testimony of all three employees present at the meeting is consistent with the conclusion that this comment was made in the context of a rebuke to Smith for attempting to leave the meeting prematurely. It is not evident that the Warden's intention was to issue a specific order to not contact the OSHA.

Listing of Actual/Apparent Violations:

None.

Action Planned or Taken:

Regardless of the context in which it was made, it was neither wise nor appropriate for the Warden to make any such comment. However, given the context in which it was made, it was determined that making the comment does not constitute official misconduct. This matter will be handled as a performance issue and the Warden will be counseled by his immediate supervisor.

Allegation 8c:

An FPI staff member alleged that USP Atwater FPI officials gave him a direct order to supervise glass breaking in Atwater's relocated booth without Mr. Smith's approval.

Findings:

The FPI Factory Manager gave the staff member a directive to work inside the relocated glass breaking booth. The staff member

contested the directive and questioned whether the booth's secure roll-down door was to be opened or closed during booth operation. The Factory Manager alerted the FPI Associate Warden for clarity regarding the roll-down door. The FPI Associate Warden challenged the staff member's failure to heed the Factory Manager's directive to work in the booth and a verbal disagreement ensued between the FPI Associate Warden and the staff member. The Factory Manager interceded for the staff member, with procedural clarity resulting in the roll-down door remaining open during glass breaking booth operation. The staff member subsequently agreed to work in the booth.

The investigation did reveal, however, that a management official was otherwise unprofessional in his interactions with the staff member when this issue arose. (OIA's report of this misconduct is forthcoming and will be shared with the OSC.)

Conclusion:

The FPI staff member was not given a direct order to work in the glass breaking booth without Mr. Smith's approval. Rather, a procedural misunderstanding occurred between the staff member, Factory Manager and FPI Associate Warden regarding the status of the booth's security roll-up doors during glass breaking.

Listing of Actual/Apparent Violation:

None, with the exception of an unrelated instance of Unprofessional Conduct on the part of a management official for the manner in which he confronted and addressed the staff member.

Action planned or taken:

Disciplinary action against the management official is planned and under review at this time. Final actions will be communicated to the OSC.

Allegation 8d:

An FPI inmate worker alleged he was threatened by USP Atwater's FPI Factory Manager with a reduction in pay grade if he did not work in the glass breaking booth.

Findings:

The FPI Factory Manager requested all factory foremen to submit names of inmates who would like to work in the glass breaking booth. FPI officials had previously established the requirement that booth workers possess a G.E.D. An inmate with Grade 3 pay was submitted for consideration. The FPI Factory

Manager evaluated the inmate's suitability for booth work and learned the inmate did not possess a G.E.D. The Factory Manager and FPI Business Manager explained to the inmate, whose primary language was Spanish, the educational requirements for working in the booth. The inmate misunderstood the explanation, stating he believed he'd been told he must work in the booth or lose his pay grade. The inmate also stated he knew booth workers were paid Grade 4 pay and he wanted an exemption from possessing a G.E.D. to work in the booth. The inmate's request for an exemption was denied and he continues to work in the FPI factory with Grade 3 pay.

Conclusion:

Our investigation revealed the inmate was not threatened with a reduction in pay grade if he did not work in the booth, nor did he express concern with the safety of the operation. Two staff witnesses provided statements that revealed the inmate misunderstood the pay grade discussion due to an English/Spanish language barrier.

Listing of Actual/Apparent Violations:

None.

Action Planned or Taken:

None.

Allegation 8e:

Mr. Smith alleged FPI and Atwater officials retaliated against him for reporting deficiencies and violations of regulations within the FPI factory.

Findings:

Mr. Smith alerted the OSC of his concerns about FPI and Atwater Management's response to his safety alerts regarding Atwater's FPI CRT dismantling operation. Our investigation did not reveal these officials retaliated against him after he alerted OSC of his concerns. FPI and Atwater officials did not, however, respond with the urgency that Mr. Smith perceived existed with respect to worker safety. FPI officials responded to each concern Mr. Smith presented, but at times their response was based on differences in policy interpretation or other disagreements with Mr. Smith's assertions.

The investigation did reveal, however, instances in which a management official communicated with Mr. Smith about unrelated

matters in an unprofessional manner in the workplace. (OIA's report of this misconduct is forthcoming and will be shared with the OSC.)

Conclusion:

There was insufficient evidence to substantiate Mr. Smith's allegation that he suffered retaliation by USP Atwater management for reporting violations to the appropriate authorities. There was, however, sufficient evidence of unrelated unprofessional behavior by a management official.

Listing of Actual/Apparent Violations:

None, with the exception of an unrelated instance of Unprofessional Conduct on the part of the management official for the manner in which he communicated with Mr. Smith.

Action taken or planned:

Disciplinary action against the management official is planned and under review at this time. Final actions will be communicated to the OSC.

Conclusion

The investigation revealed that OSHA violations, as outlined above under Allegation 1, did occur at the USP Atwater FPI CRT recycling factory during the initial months of its activation beginning in April 2002. Production stopped after the first series of test results indicated exposures. Additional exposures occurred on some subsequent occasions from July 2002 through February 2003 during a period of reengineering, intermittent operation resumption and testing. One additional exposure occurred in February 2004 as a result of an unauthorized system modification by an inmate worker.

The evidence also indicates that local and national FPI and Safety staff actively engaged in corrective action efforts after becoming aware, as a result of Mr. Smith's initiation of testing in June 2002, of problems in this regard. Unfortunately, staff responsible for making or monitoring various corrective actions, including Mr. Smith himself, did not always do so with a level of caution or strict adherence to applicable BOP policy and OSHA regulations which was, at least in hindsight, clearly in order.

Based on available evidence, it is reasonable to conclude there may have been similar violations in the past at the CRT recycling factories at FCIs Texarkana and Elkton, but there was

insufficient evidence to establish this.

At present and over the past two years, BOP FPI and Safety staff appear to have adequately addressed such concerns at all factories. For example, CRT standard operating procedures were established for all facilities in June 2003. And, as evidenced by the absence of negative test results in the recent past as well as the OSHA's recent positive inspection of the USP Atwater factory, such steps appear to be have been effective. In sum, FPI and Safety personnel appear to have taken the appropriate steps to ensure factories are operating safely and that they are in compliance with all applicable regulations and standards.

Enclosure: FPI CRT Standard Operating Procedures (CD format)

U.S. Department of Justice

Federal Bureau of Prisons

CENTRAL OFFICE
WASH. D.C.
U.S. OFFICE OF
SPECIAL COUNSEL
2005 AUG -4 PM 3:17

Washington, DC 20534

August 1, 2005

The Honorable Scott J. Bloch
Special Counsel
Office of the Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: OSC File No. DI-04-2815; ALLEGED VIOLATION OF LAW, RULE, OR REGULATION AND SPECIFIC DANGER TO PUBLIC HEALTH OR SAFETY AT THE FEDERAL PRISON INDUSTRY FACTORY, ATWATER, CALIFORNIA

Dear Mr. Bloch:

Please find enclosed an addendum to our Report of Investigation dated June 13, 2005, pursuant to the OSC case referenced above. The addendum provides additional information requested by your staff. Please let me know if we can be of any further assistance.

Sincerely,

Kathleen M. Kenney
Assistant Director/General Counsel

Enclosure

Federal Bureau of Prisons Office of Internal Affairs (OIA)

OIA Case Number 2005-00010
OSC Case Number DI-04-2815

Addendum to Report of Investigation

August 1, 2005

Additional Information Requested

Subsequent to their review of a Report of Investigation pursuant to OSC Case Number DI-04-2815, submitted by the Federal Bureau of Prisons (BOP) on June 13, 2005, the Office of Special Counsel (OSC) requested additional information. Specifically, the OSC has requested:

1. A list of the position titles of management officials against whom disciplinary action will be taken, and a timetable indicating when such action will take place;

2. Specific information regarding Federal Prison Industries' (FPI) plan to hire an independent contractor to conduct environmental, safety, and health assessments at all computer recycling factories, including the name of the contractor(s), progress to date, and any future planned actions; and

3. Specific information regarding the sequence of events which led to FPI's decision to close all internal food service operations at FPI factories nationwide by February 28, 2005.

Disciplinary Action

Disciplinary action is planned against management officials with the following titles:

BOP FPI Program Manager #1: Allegations 1 and 8c (unrelated Unprofessional Conduct)

BOP FPI Program Manager #2: Allegation 1

BOP FPI Program Manager #3: Allegation 7

BOP Warden: Allegation 8e (unrelated Unprofessional Conduct)

Those designated as "proposing officials" will send Disciplinary Proposal letters to the management officials listed above on or

before August 31, 2005. They (the management officials) will then have up to 10 days to respond to the proposals orally or in writing. Subsequently, those designated as "deciding officials" will impose disciplinary action accordingly.

Independent Contractor Assessments

FPI contracted with the National Standards Authority of Ireland (NSAI), Inc., an international standards assessment organization, principally located in Dublin, Ireland, with a United States office in Nashua, New Hampshire. The contract calls for the NSAI to conduct assessments at FPI's seven computer recycling operations[1] to ensure that they meet relevant safety and environment standards and International Standards Organization (ISO) requirements.

NSAI's assessments commenced on May 23, 2005 and were completed on July 1, 2005. FPI officials are currently in the process of reviewing the results of those assessments to identify any need for corrective action or improvement. Results of the assessments are available to the OSC upon request.

FPI has also begun a process for pursuing certification for all seven factories in three areas: ISO 9001:2000 (Quality Management System), IAER (Internal Association of Recyclers) certification, and ISO 14001:2004 (Environmental Management System).

Closing Food Service Operations

The BOP's National Industrial Hygienist conducted a "technical assistance visit" at USP Atwater from September 28 through 30, 2004. A report outlining his findings from that visit, dated December 2, 2004, was sent by the BOP Assistant Director for Health Services to the Warden at USP Atwater. Among the findings and recommendations included in the report was the following:

> Food Service/Dining Area
>
> 29 CFR 1910.141(g)(2) states, "Eating and drinking areas. No employee shall be allowed to consume food or beverages in

[1] The seven FPI computer recycling factories are located at the United States Penitentiary (USP) in Atwater, California; the Federal Correctional Institution (FCI) in Elkton, Ohio; FCI Fort Dix, New Jersey; USP Lewisburg, Pennsylvania; FCI Marianna, Florida; FCI Texarkana, Arkansas; and FCI Tucson, Arizona.

a toilet room nor in any area exposed to a toxic material." Based on the low levels of metals (toxic material)[2] in the food service/dining area, it is recommended that the food service/dining area be isolated from the factory operations. Besides physically separating the food service/dining area from the factory with doors, walls, and ceiling surfaces, isolation from factory air/ventilation would also be required to prevent deposition of metals on surfaces in the food service/dining area.

The USP Atwater Warden reviewed the report during the week of December 6, 2004, coincidentally the same week of the first interviews in the current investigation. The Warden discussed this and other findings with FPI General Counsel, who was at USP Atwater that week. FPI General Counsel recalled she had been given an unofficial copy of the report by BOP Safety officials on December 3, 2004, just prior to its issuance to the Warden, and had verbally communicated the findings generally to the FPI Assistant Director. Upon the return of FPI General Counsel to FPI headquarters on December 13, 2004, more details about that and other findings were verbally communicated to the FPI Assistant Director.

The FPI Assistant Director subsequently directed FPI staff to determine the costs of isolating food service/dining areas from factory operations at all facilities. Cost estimates of isolating food service/dining areas ranged from $110,000 to $250,000 per facility, which was determined to be too costly relative to any efficiencies gained by maintaining internal food service/dining areas. Thus, on January 26, 2005, the FPI Assistant Director sent a memorandum to all BOP Regional Directors following a telemessage to them, which states in pertinent part:

> As we discussed, some problems and issues have arisen associated with this initiative. Accordingly, it has been determined that this effort is not feasible. Moreover, any present plans to establish such food service areas in newly activating factory locations will be discontinued. All existing food service operations will be discontinued no later than February 28, 2005, unless you and I make a mutually agreeable exception.

---

[2] Earlier in his report, the Industrial Hygienist discussed taking two wipe samples in the food service area, one of which indicated "low, but detected, levels of barium and cadmium"; the other indicated "low, but detected, levels of barium, cadmium, and lead."

All internal food service operations in FPI factories were discontinued prior to February 28, 2005, with one exception: a FPI automotive plant at the Federal Correctional Complex, Petersburg, VA, which has a fully walled and separately ventilated food service/dining area constructed during activation of that factory, is now the only FPI factory which maintains an internal food service operation.

January 5, 2006

The Honorable Scott J. Bloch
Special Counsel
1730 M. Street, N.W., Suite 218
Washington, D.C. 20036-3600

Re: Executive Staff Paper on Federal Prison Industries (UNICOR) Computer Recycling Program OSC File No. DI-04-2815

Dear Mr. Bloch

Attn: Matthew Glover, Attorney Office of Special Counsel

Please find enclosed an addendum to my Response of the Bureau of Prisons Investigation dated October 27, 2005, pursuant to the OSC case referenced above.

I have expressed some deep concern about the unsafe, unhealthful, and environmental working conditions associated with the Cathode Ray Tubes (CRT's) and Central Processing Units (CPU's) being recycled by Federal Prison Industries (UNICOR) at Federal Correctional Institution (FCI) Marianna, Florida, FCI Elkton, Ohio, FCI Texarkana, Arkansa, FCI La Tuna, Texas, United States Penitentiary (USP) Petersburg, Pennsylvania, and USP Atwater, California. For the record, let me clarify my position. I essentially identified Nine (9) major issues. **First**, no hazardous metal assessments were conducted to determine the hazards associated with the CPU's and CRT's. **Second**, no environmental impact assessments were conducted for air, water, and ground quality. **Third**, no environmental safety and health risk assessments were conducted for staff and inmate workers. **Four**, UNICOR was in noncompliance with OSHA 29 CFR 1910.1025 for lead and 29 CFR 1910.1027 for cadmium. **Five**, once the residual hazardous metals 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. **Six**, 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. **Seven**, staff, inmates, and general public weren't provided respirators to protect themselves from inhaling hazardous airborne particles. **Eight**, the open glass breaking operations resulted in the release of hazardous metals into the air exposing anyone working or handling CRT's, walking through the work area, and the environment. **Nine**, UNICOR never properly informed staff and inmates of the hazards associated with the CPU's or CRT's nor provided them adequate training from 1994 through 2005. The implications at all institutions running a computer recycling program is that staff and inmates were being exposed to higher levels of lead, cadmium, barium and other dangerous metals than allowed for by Occupational Safety and Health Act (OSHA), and hazardous waste was not being disposed of in accordance with Environmental Protection Agency (EPA) standards. Obviously, we should not approach these concerns with a "business as usual" or "learn as we go" mentality. I will provide the following background to express the severity of the exposure to staff, inmate general public, staff spouse and children, and environment.

Background

The UNICOR Computer Recycling Program began operation at USP Atwater in April 2002. Prior to opening, I reviewed all relevant documented data on CPU's and CRT's and material safety data sheets, which I discovered the computer monitors contained 98 percent lead and other hazardous metals to include but not limited to arsenic, barium, cadmium, chromium, and mercury. Concerned, I requested any previous analytical data from other UNICOR Computer Recycling Programs. I learned through Thomas Stahley, Associate Warden of UNICOR, Larry Novicky, Recycling Program Supervisor, and Matthew Korbelak, National Industrial Hygienist that no other hazardous risk assessments had been conducted. However, based on my insistence, UNICOR did agree to install an internal exhaust filtering system and pay for initial testing of the exhaust filters. This was the first internal exhaust filtering system installed at any of the computer recycling programs throughout the Bureau, which all test still were well above the OSHA action level, permissible exposure limit, and threshold value for lead and cadmium. I independently contracted for outside testing. This test was one of many taken from June 2002 through January 2004 before the personal air sampling results were below the OSHA exposure limits. I provide the following for your review:

Test Results

Test 1. 40 CFR 262.11 Hazardous Waste Determination. To determine if the solid waste is a hazardous waste. When a solid waste exhibits the characteristics of toxicity, which is 5 part per million or greater is defined as hazardous waste.

Testing Results: The Toxicity Characteristic Leaching Procedure (TCLP) is the test method 1311 in "Test Methods" for evaluating solid waste, Physical/Chemical method.[1]

a. Lead	**EPA Max 5 mg/L liquid form**	
	UNICOR 1970 mg/kg solid waste	
	UNICOR 98.3 mg/L liquid form	
b. Cadmium	**EPA Max 1 mg/L liquid form**	
	UNICOR 5.8 mg/kg solid waste	
	UNICOR 0.29 mg/L liquid waste	
c. Barium	**EPA Max 100 mg/L liquid form**	
	UNICOR 250 mg/kg solid waste	
	UNICOR 12.5 mg/L liquid waste	

Test 2. 29 CFR 1926.62 (d) Exposure Assessment. The employer who has a workplace or operation covered by this standard shall initially determine if any employee may be exposed to lead at or above the action level.[2]

Testing Results: A positive initial monitoring at or above the action level the employer shall conduct monitoring which is representative of the exposure for each employee in the workplace who is exposed to lead.

a. Lead	**OSHA Action Level**	**30 ug/m3**
	OSHA PEL	**50 ug/m3**
	UNICOR	99 ug/M3

b. Cadmium	**OSHA Action Level**	**0.0025 mg/m3**
	OSHA PEL	**0.005 mg/m3**
	UNICOR	0.05 mg/m3

I wrote an executive memorandum for Mr. J.T. O'Brien, Warden, to Mr. Robert M. Haro, Western Regional Director and Mr. Steve Schwalb, Assistant Director UNICOR Industries, on July 19, 2002, addressing the implications that staff and inmates were being exposed to high levels lead, cadmium, barium at all glass breaking operations throughout the Bureau, which Federal Prison Industries (UNICOR) continued to deny any hazards associated with the CPU's and CRT's even when provided air and personal air sampling result indicating otherwise. UNICOR continued operating and exposing their staff, inmates, general public, staff 's spouse and children, and polluting the environment.

UNICOR began their first computer recycling program at FCI/FPC Marianna in 1994, which no environmental risk assessments nor personal health risk assessments were conducted to determine environmental impact or health risks to UNICOR staff and female inmate workers. The Warden at FCI Marianna became concerned with the health affects associated with the CRT's, which the female inmates reproductive system would be affected over long period of exposure. In 1997 FCI/FPC Marianna began to ship the CRT's to FCI Elkton for recycling. The same metals affect the male reproductive system equally. The Federal Prison Industries (UNICOR) and Federal Bureau of Prison have subjected staff, inmates, general public, staff 's spouse and children to lead, cadmium, barium, beryllium, mercury, chromium, arsenic, and Zinc associated with Cathode Ray Tubes (CRT's), along with lead, chromium, silver and other metal sources associated with the Central Processing Units (CPU's). Also, the older computers contained mercury switches, batteries seal as nickel-cadmium, lithium or seal lead acid, and fire retardant materials. UNICOR continued to exposure staff, inmates, and staff's spouse and children from 1994 through 2005. UNICOR staff and inmates were not provide change of clothing, clean room, dirty room, nor a shower to clean themselves from the residual hazardous metals on their hair, skin, clothing, and boots. UNICOR staff would carry the hazardous metal to their cars, homes, and expose their spouse and children through hugging, taking off their clothes the hazardous metals would become airborne, cross-contamination, which the family members were unknowingly being exposed through ingestion or inhalation.

The Federal Prison Industries (UNICOR) Computer Recycling Program knowingly exposed staff, inmates, staff families, general public, and the environment since 1994. The response from UNICOR was denial to every allegation of concern until the following Congressman, News Media, and General Public to interest in their safety and other recycling programs. I present you the following for review:

1. The Honorable Congressman Dennis Cardoza
2. The Nation "Toxic Recycling" by Elizabeth Grossman, November 21, 2005 issue
3. The San Francisco Bay View - National Black Newspaper of the Year
   "Prison Guards Protest Profits, what about Inmates?", by Aaron Shuman, November 9, 2005
4. The Merced Sun Star "Whistle Blower holds out hope of prison job elsewhere" by Adam Ashton, September 17, 2005
5. The Merced Sun Star "Prison Leaders Faulted" by Adam Ashton, September 17, 2005
6. The Public Employees for Environmental Responsibility "Federal Prisons Admit Toxic Exposure of Staff & Inmates, by Chas Offutt, August 24, 2005
7. The Public Employees for Environmental Responsibility "Prison Whistelblower Testifies, by Chas Offutt, July 28, 2005
8. The San Francisco CBS 5 Investigates "Prison Staff and Inmate Exposure from CRT's" by Anna Warner, July 2005
9. The IEEE Spectrum Magazine "Recycling Behind Bars", by Tekla S. Perry, June 2005 Addition

10. The Public Employees for Environmental Responsibility "Federal Prison Safety Chief Abruptly Resigns" by Chas Offutt, May 25, 2005
11. The Public Employees for Environmental Responsibility "Attorney General Investigates Prison Computer Recycling, by Chas Offutt, March 31, 2005
12. The Bureau of National Affairs, Inc. Washington D.C. "Prisoners, Staff Exposed to Toxics at Prison that Recycles Computer Parts" by Joyce Hedges, March 11, 2005
13. The Modesto Bee "Atwater Prison's Air Quality Questioned" by The Associated Press, March 7, 2005
14. The Public Employees for Environmental Responsibility "Computer Recycling Exposes Prison Staff and Inmates to Toxics", by Chas Offutt, March 7, 2005
15. The Merced Sun Star "Penitentiary Staff, Inmates Possibly Exposed to Toxins" by The Associated Press, March 7, 2005
16. The Los Angeles Times "Toxics May be Risk for Prison Recycling Crew", by Catherine Saillant, March 6, 2005

Finally

According to Toxicology, OSHA, EPA, and NIOSH the exposure routes are through inhalation, ingestion, skin, and the eyes. Cadmium, lead, and barium may cause local irritation of the eyes, nose, throat, bronchial tubes, skin, kidney damage, increased risk of cancer of the lung, brain damage, neurological damage, bone damage, muscle damage, and prostate cancer at low concentrations or low doses. Here's two examples: **1.** OSHA 29 CFR 1910.1025 Lead (Hazard Data) - A. The standard is intended to protect you not only from the immediate toxic effects of lead, but also from the serious toxic effects that may not become apparent until years of exposure have passed. B. There is no sharp dividing line between rapidly developing acute effects of lead, and chronic effects which take longer to acquire. Lead adversely affects numerous body systems, and causes forms of health impairment and disease which arise after periods of exposure as short as days or as long as several years. **2.** OSHA 29 CFR 1910.1027 Cadmium (Hazard Data) - A. Cadmium can cause local skin or eye irritation. B. Repeated or long-term exposure to cadmium, even at relatively low concentration, may result in kidney damage and an increased risk of cancer of the lung and of the prostate. Once staff or inmate workers have been removed from the exposure to lead, cadmium, barium, and beryllium a large part of the hazardous metals are extracted through urine and feces. This still allows a large portion of the hazardous metals to attach themselves to bone, kidney, liver, muscle tissue, and other body organs, which repeated exposure will form larger concentrations or larger doses in these areas that will cause health concerns over a period of time, like Asbestos.

The Chemical Safety Information from Intergovernmental Organization stated - The naturally occurring levels of Barium in the environment are very low. They also state the following: **1.** People with the greatest risk to Barium exposure with additional health affects are those that work the Barium industry. **2.** Small amounts of Barium may cause a person to experience breathing difficulties, increased blood pressures, heart rhythm changes, stomach irritation, muscle weakness, change in nerve reflexes, swelling of the brain and liver, kidney and heart damage.

I have Bureau staff which worked the CRT glass breaking operations at FCI Elkton, FCI Marianna, FCI Texarkana, and FCI La Tuna that have been medically diagnosed with bi-polar, skin irritation or rashes, shoulder and hip joint detrition, liver damage, kidney damage, weakness in muscles, and sores on their body. At least one Bureau employee when becoming very ill was required by UNICOR and Bureau of Prisons to take a fitness for duty and found her not fit for duty, then medically retired her. These employees will come forward and testify in front of a Congressional Over Site Committee.

The Office of Internal Affairs (OIA) investigation report was not impartial or comprehensive, when they mention in the report they didn't conduct on site visits at these institutions to interview UNICOR and Correctional Services staff who supervised or worked around the CRT glass breaking operations throughout the Bureau. The initial OIA investigation showed conspiracy, obstruction, aiding and abetting, concealment, and failure to report any matter, which violates law, rule, or regulation, abuse of authority, and public safety and health endangerment. The Office of Special Counsel then allowed the Bureau of Prisons to conduct a second investigation concerning the same matters. The only way to ensure an impartial and comprehensive investigation would be to have an outside independent agency to conduct the investigation. I would recommend the Office of Inspector General (OIG) conduct the investigation. It would be hard for the OIA to conduct an impartial and comprehensive investigation when there a component of the Director's Office, Bureau of Prisons. The OIA investigation report can't conclude there was insufficient evidence to substantiate my allegations without interviewing me or anyone else from other institutions to support my allegations. Federal Prison Industries management officials were knowingly aware of violating the OSHA guidelines and knowingly and wilfully continued to violate the OSHA guidelines which is violating the law, this is criminal especially knowing environmental and health risks they placed the staff, inmates, and staff families for maintaining production and making profit. The following needs to happen to allow the healing process to move forward:

Federal Prison Industries and Bureau of Prisons need to answer for exposing staff, inmates, and staff families to hazardous metals. They need to accept full responsibility for their actions, which are at least criminal. I would like to see Congress strengthen the Whistleblower Protection Act in the following ways:

a. Give more resources to conduct investigations.
b. Give investigation authority to the Office of Special Counsel Disclosure Unit.
c. Develop sever punishment guidelines towards agencies who retaliate, harass, or fire a employee that comes forward about violations of law.
d. Develop sever fines, disciplinary action, or prison time to Agency leaders or other staff who violate the law that's covered under the whistleblower act to protect the employee.
e. Give Administrative Judges broader authority to grant remedies immediately to prevent unlawful conduct or disciplinary action taken against a whistleblower by the Agency.

I will leave with this thought, why would any government employee with fourteen (14) year impeccable record, no disciplinary or negative log entries, numerous outstanding evaluations, and promote-able to the executive level come forward reporting executive staff violating the law, rule, and regulation, abuse of authority, endangering public safety and health, and the environment file under the Whistleblower Protection Act without foundation that staff, inmates, and staff families being exposed to hazardous metals.

If you have questions, please do not hesitate to contact me.

Sincerely,

Leroy A. Smith Jr., Bureau Employee

cc: George W. Bush, President
Congressional Over Site Committee
The Honorable Congressman Dennis Cardoza
Mary Dryovage, Attorney
Jeff Ruch, Public Employee Environmental Group
Ted Smith, Silicone Valley Coalition Group

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ARTICLE | *posted November 2, 2005 (November 21, 2005 issue)*

Toxic Recycling

ELIZABETH GROSSMAN

Research support for this article was provided by the Investigative Fund of The Nation Institute.

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About ten miles northwest of Merced, amid the dairy farms and orchards of California's San Joaquin Valley, sits the Atwater Federal Penitentiary, its tower and low-slung buildings the same mustard yellow as the dry fields that stretch out beyond the chain-link fence and concertina wire toward the Sierra Nevadas. Inside this maximum-security prison, inmates smash computer monitors with hammers, releasing dust that contains lead, cadmium, barium and other toxic substances. These inmates are employed by the electronics recycling division of Federal Prison Industries (better known as UNICOR). With sales that have nearly tripled since 2002, electronics recycling is UNICOR's fastest-growing business. But according to reports from prisons where this work is being done and interviews with former inmates employed by UNICOR, it's taking place under conditions that pose serious hazards to prison staff and inmates--and, ultimately, to the rest of America and the world.

In late 2004 Leroy Smith, Atwater's former safety manager, filed a formal complaint with the Occupational Safety and Health Administration. According to Smith, workers at Atwater's UNICOR facility are routinely exposed to dust from heavy metals. They were eating lunch in an area contaminated by lead, barium, beryllium and cadmium, he says, and using safety equipment that doesn't meet OSHA standards. Neither staff nor inmates

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were properly informed about the hazards, says Smith, who has more than a decade of experience with the Bureau of Prisons. After his superiors sent OSHA a report that downplayed and denied the problems, Smith sought whistleblower protection. He's now on paid leave while his lawsuit works its way through the Justice Department.

With $10 million of revenue in 2004, seven prison facilities and about 1,000 inmate employees who last year processed nearly 44 million pounds of electronic equipment, UNICOR is one of the country's largest electronics recyclers. There are about 400 electronics recyclers in the United States--a burgeoning industry that is vital to solving one of the information age's peskiest problems. Americans own more than 2 billion pieces of high-tech consumer electronics. With some 5 to 7 million tons of this stuff becoming obsolete each year, e-waste is now the fastest-growing part of the US municipal waste stream. It's the most challenging mass-produced trash we've ever had to deal with.

Lefty Editorial Cartoons

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The cathode ray tubes (CRTs) in computer and television monitors contain lead, a neurotoxin, as do printed circuit boards. A typical desktop computer may contain up to eight pounds of lead. Mercury, another neurotoxin, is used in flat-panel display screens. Monitors contain cadmium, a known carcinogen. Circuit boards and exteriors use plastics containing flame retardants documented as disrupting thyroid hormone function and acting as neurotoxins in animals.

When high-tech equipment is intact, these substances are mostly harmless. But when

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digital devices are physically damaged—almost inevitable during disposal--the toxins emerge. By 2001 an Environmental Protection Agency (EPA) report estimated that discarded electronics accounted for 70 percent of the heavy metals and 40 percent of the lead in US landfills. Synthetic chemicals used in electronics have been found in people, animals, food and household dust all around the world.

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Toxic Recycling

ELIZABETH GROSSMAN

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Given the hazards posed by landfilling and incinerating high-tech electronics, the safest way to dispose of them is to separate their materials, which can then be reprocessed as feedstock for new products. But these materials are tightly packed, largely unlabeled and of variable design, making that separation process both expensive and labor intensive.

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That's where UNICOR comes in. The United States--unlike the European Union and several other countries, including Japan--has no national laws requiring electronics recycling. Yet over the past few years, individual states and local governments have begun enacting legislation to keep high-tech trash out of their landfills. At the same time, a growing number of businesses and organizations, concerned about the liabilities posed by dumping old computers, are opting to have equipment recycled. To save money many are sending equipment to UNICOR.

"UNICOR's program is labor intensive, so capital machinery and equipment expenses are minimized, this helps keep prices low," says a company brochure. With a captive workforce UNICOR's electronics recycling program can afford to be labor intensive. Because it is run by the Bureau of Prisons, UNICOR does not have to pay minimum wages—recent wages were $0.23 to $1.15 an hour--or provide benefits. Though UNICOR is not taxpayer supported, its pay scale would not be possible without taxpayer support of the inmates.

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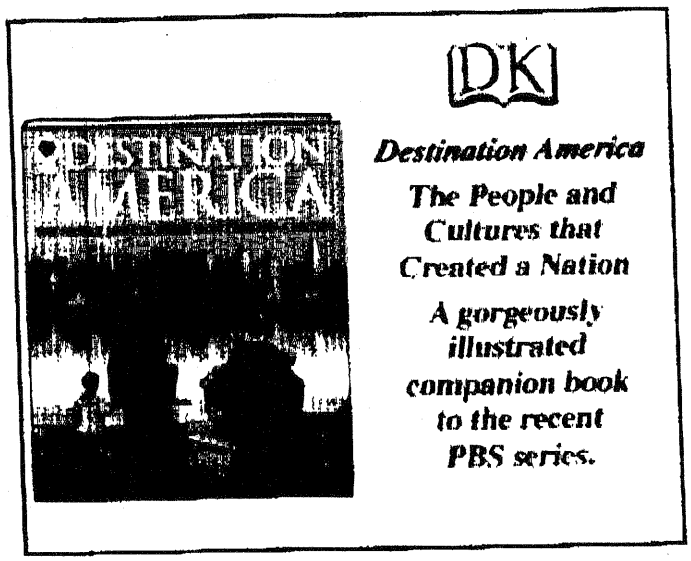

The savings payoff for UNICOR: In 2004 UNICOR's Lewisburg, Pennsylvania, prison facility won a contract from the Pennsylvania Department of Environmental Protection with a price one-quarter of that bid by private-sector recyclers. "I welcome the competition, but let's level the playing field," says Andy Niles of Scientific Recycling in Holmen, Wisconsin. Niles says he had to lay off about one-quarter of his staff after losing business to his state's prison industry.

"Busting up monitors exposes you to a lot more risk. But broken monitors saves on shipping costs," says Greg Sampson of Earth Protection Services, another private recycler. "Broken, you can fit about 100 into a carton, whereas only thirty-five or so will fit if they're intact. We don't break ours up." Neither do other private recyclers I contacted. "It's more expensive, but we pack them in lined boxes that are shipped with a manifest indicating hazardous material contents, and we use special machines to deactivate CRTs," explains Scott Sodenkamp, operations manager at the Noranda Recycling plant in Roseville, California. At Atwater, Leroy Smith told me, broken CRTs are packed in cardboard cartons and sealed with plastic wrap.

UNICOR doesn't just save money by busting up monitors and paying prison wages. Instead of investing in state-of-the-art disassembly equipment and durable safety gear, UNICOR reportedly distributed ball-peen hammers and cloth gloves to inmates working at Atwater. "The gloves ripped easily and there were lots of bad scratches and cuts," a former Atwater UNICOR worker told me. Staff and inmates who worked at UNICOR's Elkton, Ohio, and

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Texarkana, Texas, operations have similar accounts of broken glass, noxious dust and injuries resulting from inadequate tools.

UNICOR declined my request to visit the Atwater facility. But an OSHA inspector who toured it in late 2004 confirmed many of the inmates' complaints: "While conducting sampling, I observed, and numerous workers reported, the improper use of tools and techniques due to the lack of appropriate tools to more safely dismantle monitors."

"We were given light-particle dust masks and the stuff would get in behind them," the former Atwater inmate told me. "In the glass-breaking room, guys would be pulling junk out of their hair and eyebrows. We were coughing up and blowing out all sorts of nasty stuff, and open wounds weren't healing." The coveralls inmates wore on the job--kept on during breaks and meals--would come back from laundering with glass and metal dust in rolled cuffs, he says. Work boots were worn outside the factory, too, potentially contaminating other areas of the prison—something OSHA regulations are designed to avoid. Prison staff, say Smith and others, wear regular uniforms and shoes in the factory, allowing contaminated dust to be transferred to their cars, homes and families.

In 2002, air samples taken at Atwater found lead levels twice OSHA's permissible exposure level, and cadmium ten times the OSHA standard. Wipe samples found lead, cadmium and beryllium (which causes severe lung disease) on work surfaces and inmates' skin. Blood and urine testing found barium, cadmium and lead, some at elevated levels.

UNICOR's computer disassembly process releases so much lead, in fact, that its dust qualifies as hazardous waste. Smith and former staff at UNICOR's Elkton, Ohio, facility say this waste has been improperly handled. "Prison staff were removing the filters that collect the dust from the glass-breaking without wearing respirators, and putting these filters in the general prison trash," says Smith, who showed me photographs of worktables covered with thick layers of pale gray dust.

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Toxic Recycling

ELIZABETH GROSSMAN

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Because UNICOR works behind bars, it has another advantage over its competitors: It doesn't have to be prepared for unannounced OSHA inspections. And even though some factories opened in 1997, there were no OSHA inspections until 2004. The air tests in late 2004 found lead, barium and cadmium at Atwater--but below the levels at which OSHA requires the use of safety equipment. These test samples, however, were not taken around inmates "involved in the deliberate breaking of computer monitors," says the OSHA report. Even so, barium, beryllium, cadmium and lead were found on work surfaces; barium, cadmium and lead were found in the workers' dining area, creating the potential for accidental ingestion. But none of that violates OSHA standards. As the OSHA inspector noted, there are actually "no standards or regulatory levels for these metals on surfaces."

How toxic is the dust? Long-term exposure to low levels of cadmium damages kidneys and can lead to lung disease. Workers exposed to the levels of lead found in Atwater's air in 2002 would eventually have elevated blood lead levels--not enough to cause acute lead poisoning but plenty to cause kidney or neurological damage, according to leading environmental and occupational health scientists. "If a workplace has enough lead to fall near the OSHA standards, that would be enough to come home and pose a risk to children," says Howard Hu, a professor at the Harvard School of Public Health.

Inhalation exposure is the most dangerous in terms of getting lead into the body, Hu says.

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OSHA standards—and those now set by the EPA—likely allow far higher exposure than is truly safe. In fact, says Dr. Bruce Lanphear, director of the Children's Environmental Health Center at Cincinnati Children's Hospital Medical Center, "there is no safe level."

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Despite the recent surge of concern about data security, most people know little about where discarded digital equipment ends up. Great quantities of e-waste sent to domestic recyclers end up overseas—in China, Africa, Southeast and South Asia, and other developing regions--where much of it is processed cheaply, under unsafe and environmentally unsound conditions. To avoid this, many recyclers and their clients demand rigorous documentation of the downstream flow of dismantled equipment.

"Environmental stewardship and social responsibility are critical issues for our clients," says Robert Houghton of Redemtech, which recycles electronics for Fortune 500 companies. Redemtech considered working with UNICOR, Houghton told me, but chose not to because UNICOR could not provide the downstream accountability Redemtech's customers required.

UNICOR says that no material it recycles will be landfilled or exported for dumping. UNICOR's no-export policy prohibits shipping electronic waste to any country barred by the US government from receiving US products. These countries, UNICOR told me, are Cuba, Iran, Iraq, North Korea, Libya, Sudan and Syria. But that leaves many countries to choose from, since US laws only prohibit exporting hazardous material destined for

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disposal--rather than recycling--or when it involves transfer of "sensitive" technology. "It's absolutely legal to send this stuff to Pakistan," says Houghton.

Much of what UNICOR recycles comes from the federal government, which buys about 7 percent of the world's computers and disposes of at least half a million each year. In 2002 the Defense Department sent some 17 million pounds of used electronics to UNICOR for recycling. UNICOR's website also lists several universities as clients. But some counted as customers no longer are--among them the University of Colorado, which wanted better documentation than UNICOR provided. Same with Johns Hopkins. "Using prison labor was not looked at very favorably," says a university employee who asked not to be named.

The United States is the only industrialized nation that uses prison labor for electronics recycling. "We can do without it, but are we willing to do without it?" asks Craig Lorch, whose company, Total Reclaim, is among the thirty or more that have pledged not to use prison labor. Until environmental and social benefits are given priority over the bottom line, UNICOR's low-cost option will continue to be used by the government and many others. But relying on workers who are not paid a living wage, and who work in unhealthy and environmentally unsound conditions, displaces rather than solves the e-waste problem. The long-term environmental costs cannot even be calculated. As long as the United States does not require transparency and accountability from recyclers, it will be impossible to know how these toxic materials are treated, or where they go.

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Prison guards protest poisoned profits; what about the inmates?

by Aaron Shuman

A worker dismantles CRTs (cathode ray tubes) from TVs by hand for recycling.

Over a long Labor Day weekend in Las Vegas, the Council of Prison Locals, the labor union representing federal prison guards, met to mark another year. In one room, the topic of conversation was neither the basics of staffing overcrowded prisons nor the delights Vegas has to offer, but the health risks of working at electronics recycling facilities run by Federal Prison Industries and the possibility of filing a national grievance or class action lawsuit.

This meeting followed the August release of a report by the federal Bureau of Prisons, confirming what many had feared: that inmate workers and staff in at least three prisons – in Atwater, Calif.; Elkton, Ohio; and Texarkana, Texas – were exposed to toxics. Advocates say the growing scandal has already resulted in the early retirement of the BOP's top health and safety official, Stephen Tussey, while Leroy Smith, a former health and safety official at Atwater, fights for whistleblower protection and his career in a San Francisco hearing.

It's unclear how much the mostly African-American and Latino inmates working at FPI (also known as UNICOR) know of the controversy. "This is a toxic sentence," says Gopal Dayaneni of Silicon Valley Toxics Coalition, a group which toured the Atwater facility in 2003.

"As soon as you take one of these jobs, you're in for life, because you basically are getting exposed to toxics that you take with you wherever you go, and it's very possible that you will have health issues after you get out and that those health issues will be expensive and potentially a burden to you or your family."

Computers, monitors and TVs generally aren't thought of as toxic waste, but once discarded, they are banned from landfills in several U.S. states. Breaking them down into recyclable elements is big business; it's also potentially hazardous, since the products contain lead, cadmium, mercury and other materials that can cause cancer or reproductive damage with prolonged exposure. That's why many recyclers use air-powered tools and self-contained mechanical shredders to separate the elements, and workers wear equipment like goggles and gloves for protection.

Behind prison walls, affidavits collected by inmates at one UNICOR facility describe horrific conditions. "When the operation began, most glass room workers would heft the CRT [cathode ray tube] to head height and slam the CRT down on the metal table and keep slamming it on the table until the glass broke away from whatever they were trying to remove," one inmate writes.

"We was getting showers of glass and the whole chemicals out of the tube," writes another. "We was cutting ourselves. I only went to the hospital twice, but one of them was a serious injury to my chest. They even took pictures of it at the hospital."

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"We're trying to figure out how I or whoever can let the director of the BOP know that someone's pulling the wool over his eyes. Everybody's mentioning this thing about blood levels and [the exposure]'s not enough, or it was but now they're making it right.

"That's not the issue; the issue is we were lied to and exposed for all them years, for reason of profit," Carter says. "It's too late for the blood level thing; we were already exposed for years.

"Close to being criminal, especially if it could ever be proved that he intentionally done it. I don't see how it could be looked at any other way." Fortunately for the guards, they have lawyers.

Silicon Valley Toxics Coalition encourages workers at UNICOR's eight electronics recycling facilities – at Atwater, Elkton, Texarkana, La Tuna, Texas; Marianna, Fla.; Fort Dix, N.J.; Lewisburg, Pa.; and Tucson, Ariz. – and their family members to send testimonies to SVTC at 760 N. First Street, San Jose, CA 95120. For more information and documentation, check Public Employees for Environmental Responsibility at www.peer.org.

Aaron Shuman was incarcerated for four months at Atwater for protesting the U.S. Army School of the Americas (www.soaw.org). He can be reached at ashuman101@aol.com.

The BOP report describes management's "learn as you go" approach to complying with environmental standards and claims there has been no toxic exposure since 2004. Inmate workers describe a pattern of shutting down production to pass air quality tests, as well as routine injuries from broken monitors such as being lacerated by leaded glass and inhaling toxic dust.

Prisoners who spoke out were punished by guards, and those who asked for test results or material safety specs were told to file a request under the Freedom of Information Act. Another inmate writes:

"Prisoners were receiving literature about all the toxic material in the computers and the computer monitors, and they were sharing it. When prisoners left these reports on the bulletin boards in the living units, the counselors and case managers ripped them down and threatened to infract anyone caught posting the educational literature. We were beginning to collectively fear for our safety as we recalled how we shattered hundreds of pallets with no protection afforded us – and that we had been told that we were safe and that we had believed them."

Leroy Smith has been out on stress leave since November 2004, and he agrees with Dayaneni about the health risks. "This isn't about Leroy Smith," he says. "This is about families."

In February 2005, the safety specialist at Atwater, Phil Rodriguez, protested and refused to sign off when Warden Paul Schultz rewrote his report on health and safety at UNICOR. (Atwater's facility has an especially bad environmental record: in November 2003, a wall of TVs, left to bake in the sun on a loading dock, caught fire, and flummoxed guards sent inmates driving into the fire on forklifts to clear the mass.)

In March 2005, the federal Occupational Safety and Health Administration announced it intended to inspect Atwater. The massive cleanup that preceded OSHA's visit so infuriated inmates that one blew dust into OSHA's air quality monitoring equipment, arguing that it should get a taste of what inmates had to breathe every day at the facility.

After OSHA left, he was fired, reportedly for interfering with a government test. Another inmate was fired this summer, when he refused to risk injury by working with a drill with an exposed wire. Several inmates complained about inadequate safety training and about guards calling them women if they raised concerns about their health.

As expected, the whitewash came in June, with OSHA failing to uphold any of Smith's complaints. Soon after, in a contortion reminiscent of Assistant Attorney General Jay Bybee's redefinition of torture, the BOP found there was "no imminent hazard." While "exposed workers may experience chronic health effects as a result of exposures over time," Bybee explained, "these exposures did not rise to the level of being imminently dangerous, as no immediate threat of death or serious physical harm occurred."

Smith will file his responses to these reports soon. He notes that the EPA's standards are stricter than OSHA's.

He has the support of officers like Charles Carter, a 15-year veteran in corrections, who says he was the first Officer of the Year at Elkton, Ohio. Carter helped establish the UNICOR recycling facility there and says gingerly that after asking some unpopular questions and having some unpleasant exchanges with management, he took a job in Victorville, Calif.

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Merced Sun-Star, The (CA)

Whistle blower holds out hope of prison job elsewhere

Published September 17, 2005

Section: local
Page: 01

By: Adam Ashton AASHTON@MERCEDSUN-STAR.COM

ATWATER -- Leroy Smith doesn't expect to return to his job as safety manager at the U.S. penitentiary here now that he has drawn attention to environmental flaws with an inmate recycling program. Smith has not been to work in 11 months. He is pressing for whistle-blower protection and a transfer to another penitentiary. But if he doesn't reach an agreement soon, he says he could lose the 14 years of seniority he earned in the Federal Bureau of Prisons. Whistle-blower status would not get Smith any benefits for the time he has missed, but it could restore his ability to work as a federal employee, said his attorney, Mary Dryovage. "He's trying to be transferred out to another prison where he can resuscitate his career," Dryovage said. Smith said his experience convinced him that Congress should add more teeth to whistle-blower protection laws. For example, he'd like to see the Office of Special Counsel, an independent prosecutorial agency, gain more authority to conduct investigations and punish managers who violate whistle-blower protections. The Office of Special Counsel triggered a Bureau of Prisons review of Smith's complaints about the Atwater penitentiary late last year. The special counsel must sign off on the bureau report, but it cannot enforce any discipline in the case, said Jim McVay, a special counsel attorney. Rather, it will issue a report saying whether the bureau's investigation and discipline plans are "reasonable," McVay said. Both the Federal Bureau of Prisons and the Atwater penitentiary declined to answer written questions

about Smith's status. An internal bureau report indicated that some of Smith's concerns about the program were justified, but top administrators did not purposefully intimidate or marginalize him. Smith, whose complaints have been broadcast on Bay Area news stations and radio programs, said he sought to draw attention to potential flaws in the computer recycling program to protect inmates, workers, the environment and the Bureau of Prisons. Besides letters indicating he would lose his health benefits since he started his stress leave last fall, Smith says the bureau's offers for transfers have come attached with requirements that he drop his complaints about the Atwater prison. He's looking for an agreement that will allow him and his family to regroup. "I would like the Bureau of Prisons to stop this retaliation and allow me to get back to work, to allow the healing process for me and my family to begin. We need to move on with our life," he said.

Caption: SMITH

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Merced Sun-Star, The (CA)

Prison leaders faulted

Published September 17, 2005

Section: local
Page: 01

By: Adam Ashton

CASTLE -- The Federal Bureau of Prisons intends to discipline top managers at the U.S. penitentiary here for not acting quickly enough to correct environmental health problems associated with an inmate computer-recycling program, according to an internal report. The report does not identify which officials might be reprimanded, but it criticized unidentified administrators for not setting up adequate safeguards when the prison opened the program in April 2002. It also says inmate workers were exposed to unsafe levels of lead and cadmium for about 80 days when the facility opened and intermittently over the next two years while prison officials tried to either put the program on hold or improve health precautions. Exposure to lead can affect a person's nervous system, while cadmium exposure can lead to lung and prostate cancer, according to Labor Department reports. Two other federal prisons in Ohio and Texas with similar computer recycling programs also suffered from insufficient health safeguards, the report said, and managers could be disciplined there as well. The report says an examination will be completed soon covering engineering controls, regulatory compliance and worker safeguards at all prisons with similar recycling operations. It concludes that the computer-recycling program here is now safe for inmate workers and prison employees because of precautions the penitentiary has implemented. The Atwater recycling program is one of seven nationwide administered by Federal Prison Industries, an arm of the Bureau of Prisons. "In sum, FPI

(Federal Prison Industries) and safety personnel appear to have taken the appropriate steps to ensure factories are operating safely and that they are in compliance with all applicable regulations and standards," the report says. The Bureau of Prisons and the Atwater penitentiary declined to identify what kind of discipline might result from the investigation. The 27-page report mentions discipline at two occasions. First, it says, "Disciplinary action against management officials is planned and under review at this time," following a description of safety mistakes in the program's early days. Later, the report chastises Atwater Warden Paul Schultz for inadvertently giving the safety manager who complained about the program the impression that he didn't want Occupational Safety and Health Administration officials to review the operation. Prison officials said they're committed to ensuring a safe environment at the computer operation. U.S. Penitentiary Atwater "takes very seriously its responsibility to provide safe working conditions to inmates and staff and is committed to taking all necessary steps to ensure that inmates and staff are provided with a safe working environment," wrote Jesse Gonzalez, the prison's executive assistant, in a response to written questions from the Sun-Star. Leroy Smith, the penitentiary safety manager who requested the investigation, said the report showed progress made by the prison, though he'd like to see a similar analysis of the program's predecessors at other prisons across the country. "The agency is starting the healing process by at least admitting there may have been some issues, but they're not coming out and exposing themselves to the truth," he said. Bureau of Prisons Director Harley Lappin signed the report on June 13 and submitted it to the federal Office of Special Counsel, an independent arm of the federal government charged with enforcing certain laws aimed at protecting public employees. Lappin acknowledged that Smith's allegations "constitute a substantial likelihood that a violation of law, rule or regulation and a substantial and specific danger to public health or safety has occurred." Jim McVay, an attorney in the Office of Special Counsel, said Smith would have an opportunity to comment on the bureau report, after which McVay's office would submit a final report determining whether the bureau conducted a "reasonable" investigation into Smith's complaints. That report then goes

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to the White House and congressional oversight committees. Smith is also contesting a federal OSHA inspection of the computer-recycling facility because, he says, the workplace safety agency gave the prison too much time to clean up the operation before it conducted an inspection last spring. OSHA concluded the program was clean and safe for inmate workers, a finding used in the bureau report to substantiate its assertion that the recycling project could move forward. It is unclear if Smith's protests will result in another inspection. Regional OSHA administrators previously said they had no reason to return to the Atwater prison following their last inspection. OSHA Regional Director Frank Strasheim was unavailable for comment Thursday and Friday. Kenneatha Clark, the inspector who visited the Atwater prison earlier this year, did not return calls for comment. Gonzalez said the prison sometimes brings in visitors with less than two weeks notice, but he also said the prison worked closely with OSHA to make sure inspectors had what they needed for their report. Gonzalez said OSHA inspectors saw the plant as it normally operates. Smith, who has not worked at the prison for the past 11 months, is seeking federal whistle-blower protection and a transfer to another penitentiary. He has a 14-year career in the Bureau of Prisons behind him. The Bureau of Prisons report, released through an environmental health advocacy group, analyzes 13 of Smith's allegations of wrongdoing at the federal prison. It was based on 31 interviews with different prison officials and extensive documentation of potential health risks. The report indicates most of Smith's allegations were not substantiated and were being addressed by administrators. It particularly dismissed Smith's suggestions that administrators engaged in a concerted effort to marginalize his complaints. It focused on missteps that occurred while the prison attempted to get the facility on line in 2002. Mistakes from the program's startup highlighted by the bureau report include: • Installation of a ventilation booth that was not powerful enough to filter metals released when inmates smashed a component of the computers; • Use of work practices that were not approved by an industrial hygienist; • A lack of appropriate respirators for workers; • A lack of appropriate lunchrooms, change rooms and showers for inmate workers and prison employees; • Inadequate medical surveillance until June 2003; • Insufficient

training for employees; and, • A reluctance by the program's managers to shut it down promptly when Smith identified problems with glass-breaking operations. At one point in 2003, a poorly installed air filter caused a film of silvery dust to settle in parts of the factory, the report said. It says the prison might have avoided inmates' exposure to harmful metals if it had sought guidance from OSHA or hired someone with technical expertise to craft a safety program. The report also says the Atwater prison has improved safety precautions by instituting annual testing for inmate workers; venting exhaust from the glass-breaking operation outdoors; providing protective equipment, including fullface respirators, KEVLAR gloves, coveralls and boots; and offering more safety training for inmates and prison employees alike. Smith says he is pleased the prison has implemented the safety precautions, but he'd like to see more done. For starters, he wants the bureau to investigate the computer-recycling programs in Ohio and Texas as it did in Atwater. And, he says, the Atwater facility would be safer if inmates dismantled electronics under hoods that would suck up the trace amounts of metals released by their work. Otherwise, he says, the metals are likely to build up over years and lead to uncertain illnesses in the inmates and prison employees. "I understand that they need to keep inmates busy, but I don't think it's worth it at the cost of inmates and staff," he said. Reporter Adam Ashton can be reached at 385-2484 or aashton@mercedsun-star.com.

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Public Employees for Environmental Responsibility News Release (www.peer.org)

For Immediate Release: August 24, 2005
Contact: Chas Offutt (202) 265-7337

FEDERAL PRISONS ADMIT TOXIC EXPOSURE OF STAFF & INMATES — Discipline of Officials Promised for Ignoring Computer Recycling Safety Warnings

Washington, DC — In a defensively worded report, the Federal Bureau of Prisons conceded that its own staff and inmate workers in its computer recycling enterprises were exposed to harmful heavy metals above allowable safety limits, according to a report released today by Public Employees for Environmental Responsibility (PEER). The agency also found "it is reasonable to conclude" that toxic contamination occurred at two other prisons, beyond California's Atwater Federal Prison where problems were first reported.

The report was prepared in response to a whistleblower disclosure filed last year by Leroy Smith, the Atwater safety manager, with the U.S. Office of Special Counsel. Smith charged that inmates were showering particles of heavy metals, such as lead, cadmium, barium and beryllium, over themselves and civilian staff, when hammering apart computer terminals for recycling as part of a prison industry operation. The Bureau's report –

- Confirms the gist of Smith's disclosure that inmates and staff had been exposed to lead, cadmium and barium above recommended safety limits;
- Admits that officials repeatedly re-started recycling operations over the objections of safety manager Smith; and
- Promises to institute disciplinary action against unnamed prison managers.

While the Federal Bureau of Prisons did not formally investigate conditions at the other six prisons with similar computer recycling enterprises, test results at two of the prisons, Elkton, Ohio, and Texarkana, Texas, found similarly excessive exposure levels. Nonetheless, the report maintains that problems identified by Smith are being corrected.

"In this report, the Federal Bureau of Prisons insists that the problems it initially had vehemently denied now have been magically resolved by the same managers who created them in the first place," remarked PEER Executive Director Jeff Ruch, whose organization has been calling for an independent review. "Tellingly, the Bureau admits that there are probably similar safety problems at the other prison computer recycling plants but has decided not to investigate further."

Director Harley Lappin signed the report, dated June 13, 2005, and submitted it to Special Counsel Scott Bloch but, inexplicably, Bloch's office held the report for more than two months before transmitting it to the whistleblower as is required by law. Smith is allowed to comment on the report before the Special Counsel decides whether the agency response is adequate or requires additional work.

"Leroy Smith deserves a medal for risking his career to bring these problems to light but instead he is blackballed from going back to work," stated San Francisco attorney Mary Dryovage, who is representing Smith in a whistleblower action that seeks transfer out of Atwater and restoration of a lost promotion. "While it is a good sign that the Federal Bureau of Prisons claims that it will discipline responsible officials, a slap on the wrist will not restore the health or the peace of mind of scores of affected employees and inmates."

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Read the Federal Bureau of Prisons report to the Office of Special Counsel

Look at Leroy Smith's safety complaint

Learn about the abrupt resignation of the federal prison system safety chief and other developments

Public Employees for Environmental Responsibility News Release (www.peer.org)

For Immediate Release: July 28, 2005
Contact: Chas Offutt (202) 265-7337

PRISON WHISTLEBLOWER TESTIFIES — Last Day Of Hearing For Toxic Computer Recycling Program

Atwater – Safety Manager, Leroy Smith, will be cross-examined tomorrow concerning the Federal Bureau of Prison's computer recycling program that is exposing staff and inmates to toxic levels of hazardous metals.

Administrative Judge Jeremiah Cassidy will be deciding whether to allow Smith=s whistleblower retaliation case to proceed, pending the Bureau=s cross-examination of Smith, and testimony from three additional agency witnesses. The Bureau must prove by clear and convincing evidence that the agency would have taken the same retaliatory and harassing actions it took against Smith, even if Smith had not blown the whistle on the toxic recycling program.

What: Final Witnesses Testify in Environmental Whistleblower Retaliation Case
When: July 29, 2005 at 10:00 a.m. (Pacific Standard Time)
Who: Leroy Smith v. Department of Justice/Bureau of Prisons (Atwater, California) Case Number: SF-1221-05-0341-W-1
Where: Merit Systems Protection Board, 250 Montgomery Street, 4th Floor, San Francisco, CA

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Toxic Hazards In Prison Recycling Programs? CBS 7/22/05

Review recent developments regarding Atwater Federal Prison

Public Employees for Environmental Responsibility News Release (www.peer.org)

For Immediate Release: May 25, 2005
Contact: Chas Offutt (202) 265-7337

FEDERAL PRISON SAFETY CHIEF ABRUPTLY RESIGNS — Toxic Contamination Worries in Computer Recycling Shops Widen to Other Prisons

Washington, DC — The top safety official for the Federal Bureau of Prisons has abruptly resigned as concerns over mishandling of toxic residues from prison industry computer recycling operations spread from one prison to other facilities, according to agency emails released today by Public Employees for Environmental Responsibility (PEER).

On May 16, Steven Tussey resigned as National Safety Administrator for the federal prison system effective June 2. His abrupt retirement after only three years on the job raises questions about findings of a system-wide review that seven computer recycling prison enterprises are exposing both prison staff and inmates to harmful levels of toxic materials.

This spring, Leroy Smith, the safety manager at Atwater Federal Prison, a maximum-security institution located just outside of Merced, California, went public with documents that inmates using hammers for breaking computer terminals down to components parts for recycling are also spewing particles of heavy metals, such as lead, cadmium, barium and beryllium, over themselves and civilian prison staff. The factory at Atwater also provided an open food service in the contaminated work areas.

Now, safety officials at the Federal Correctional Institution at Elkton (Ohio) are raising similar red flags about their facility's computer recycling operation. Filters coated with lead dust have been routinely been handled by untrained staff and improperly stored in open bins. Neither staff nor inmates were warned of dangers of direct exposure to the toxic dust that coated their hair, skin and clothing every day.

"The Attorney General is supposed to oversee the Federal Bureau of Prisons but oversight from the Attorney General is nowhere to be seen," stated PEER Executive Director Jeff Ruch, noting that a Department of Justice response to a November 15, 2004 referral of Leroy Smith's whistleblower disclosure is four months overdue. "Given the past record of Alberto Gonzales on issues of prisoner mistreatment, he should be stepping up to the plate on this investigation, not hiding behind subordinates."

Besides Atwater and Elkton, five other federal prisons have similar computer recycling plants: Ft. Dix (NJ), Lewisburg (PA), Marianna (FL), Texarkana (TX) and Tucson (AZ). The Federal Bureau of Prisons is part of the U.S. Department of Justice, headed by Attorney General and former White House Counsel, Alberto Gonzales. Consequently, Gonzales is now in charge of one of the world's largest prison systems.
Smith, who first brought these problems to light, is now a magnet for his colleagues in the other facilities who were unaware of the health risks. San Francisco attorney Mary Dryovage, who is representing Smith, in a whistleblower action that seeks transfer out of Atwater and restoration of a lost promotion, commented that, "The Federal Bureau of Prisons is now on a campaign to discredit Leroy Smith, a 13-year employee with a spotless record and past performance awards, rather than figuring out how to address the health and safety problems."

###

See Steve Tussey resignation email

Look at unfolding problems at Elkton Penitentiary

Learn about the toxic threats at Atwater Federal Prison

Read about the overdue and slowly evolving U.S. Attorney General investigation

Public Employees for Environmental Responsibility News Release (www.peer.org)

For Immediate Release: March 31, 2005
Contact: Chas Offutt (202) 265-7337

ATTORNEY GENERAL INVESTIGATES PRISON COMPUTER RECYCLING — Toxic Exposure of Staff and Inmates at Issue

Washington, DC — Attorney General Alberto Gonzales has been directed to investigate a whistleblower disclosure that a prison computer recycling operation is exposing both prison staff and inmates to harmful levels of toxic materials, according to a letter from the U.S. Office of Special Counsel released today by Public Employees for Environmental Responsibility (PEER). The Attorney General's report is supposed to be reviewed by both the independent Office of Special Counsel and the prison safety manager, who revealed the dangers, prior to its public release.

The federal penitentiary at Atwater, a maximum-security institution located just outside of Merced, California, has operated a computer recycling plant since 2002 but the operation has been plagued by safety problems and shutdowns. After repeated attempts to cut toxic contamination had been rebuffed, Leroy Smith, the safety manager at Atwater, filed a complaint with the Occupational Safety & Health Administration and sought whistleblower redress with the Office of Special Counsel.

At Atwater, inmates using hammers break computer terminals down to components parts for recycling. Particles of heavy metals, such as lead, cadmium, barium and beryllium, are released when inmate workers break the glass cathode ray tubes during shipping and disassembling. The factory at Atwater provides an open food service in the contaminated work areas.

This past Tuesday, more than two months after Smith's complaint, OSHA finally entered the Atwater prison to conduct its required inspection. Contrary to its own rules, OSHA negotiated a pre-scheduled time for its inspection with prison authorities.

The Federal Bureau of Prisons is an agency under the U.S. Department of Justice, headed by the new U.S. Attorney General and former White House Counsel, Alberto Gonzales. In his new position, Gonzales oversees one of the largest prison systems in the world. The Gonzales report to the Office of Special Counsel was due on February 28, 2005. As the whistleblower, Smith has a right to see and comment upon the report before the Special Counsel decides whether more investigation is needed.

"Wipe samples taken off skin, clothing, floors and work surfaces have shown dangerous levels of hazardous dust," stated PEER Executive Director Jeff Ruch, noting that containment systems used by the prison for dust particles are crude, at best. "While the inmates are not going anywhere, staff who go home with toxic dust on their clothing risk spreading contamination to their families."

Six other federal prisons have similar computer recycling plants but Gonzales has confined his investigation to Atwater.

Smith is a 13-year Federal Bureau of Prisons employee with a spotless record and past performance awards. San Francisco attorney Mary Dryovage, who is representing, in his whistleblower action, said, "It is a shame that conscientious public servants have to run a gauntlet of retaliation just to do their jobs."

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Read the Special Counsel's order for Department of Justice review

Learn about the OSHA complaint filed by the prison safety staff

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Joyce Hedges

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Federal Agencies

Prisoners, Staff Exposed to Toxics At Prison That Recycles Computer Parts

The Occupational Safety and Health Administration is investigating allegations that workers and staff at a federal prison in California are being exposed to toxic materi result of a computer recycling operation located in the facility, an advocacy group, F Employees for Environmental Responsibility, announced March 7.

In late January, a prison staff member filed an OSHA complaint alleging that particl heavy metals such as lead, cadmium, barium, and beryllium were released when ir workers broke glass cathode ray tubes during shipping and disassembling, accordi PEER.

The complaint also alleged that there was an open food service in the contaminate areas. In addition, neither prison staff nor inmates were informed of the health risks associated with the recycling work and no training on handling of contaminants was provided.

The number of workers exposed includes about 120 prison workers, five prison sta members and several correctional officers, according to Leroy Smith, the prison saf officer who filed the complaint.

An OSHA official confirmed March 9 that the complaint had been received by the a

OSHA officials told Smith the complaint was passed up to the regional office in San Francisco and that it is "still under review," he said

Response From Prison.

The federal prison industry authority, known as UNICOR, has operated a computer recycling plant at the federal prison in Atwater, Calif., since 2002. Six other federal perform similar operations that recycle outdated and broken computers, televisions other electronic devices for federal, state, and county agencies.

The first draft of a response to OSHA from the prison in January acknowledged ma safety problems, but the final version, dated Feb. 11, indicated that the facility is in compliance with OSHA regulations or is making minor revisions to come into compl PEER said.

PEER said the final version of the letter was revised by officials at the headquarters the Federal Bureau of Prisons, which oversees the maximum-security institution for

Smith has been raising worker safety issues connected with the recycling work at th Central California facility since 2002, said Jeff Ruch, executive director of PEER.

"The OSHA complaint was a measure of his frustration," he said.

Smith chose to file the OSHA complaint after discovering that several prisoners wh been doing the most hazardous job—smashing computers open with hammers—wer to have high levels of barium in their blood, he told BNA March 8.

Federal prison officials do not want to acknowledge that staff or prison workers are exposed to toxic material because it would require costly changes to the recycling p that has recently lost several large customers, PEER said.

"It's all about the dollar," Smith said. "They had been exposing staff and inmates [at facilities] since 1998."

Smith has not worked at the prison since October 2004 when he left on a stress-rel disability claim, he said.

By Joyce Hedges

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Modbee.com

Atwater prison's air quality questioned

THE ASSOCIATED PRESS

ATWATER — Government officials are investigating complaints that a computer recycling operation at the federal penitentiary here exposes inmates and guards to toxic contaminants.

The U.S. Occupational Safety and Health Administration probe follows allegations by a safety manager at the Atwater prison that the plant kicks up dust containing lead, cadmium and barium.

The hazardous metals, found in the computers dismantled by prison labor crews as they search for reusable parts, poses a health risk to 120 convicts and the prison staff in the vicinity of the contaminated air, said Leroy Smith, the prison safety official.

Smith lodged a complaint with OSHA on Jan. 24. Investigators are reviewing the prison's response and could inspect the facility, said Frank Strasheim, an OSHA regional administrator.

"That is part of the process if we are not satisfied with the results," Strasheim said. "What we are after when problems persist is corrective action."

Smith said prison officials agreed to only superficial fixes and played down the safety risks in their response to OSHA.

Officials at the prison did not return phone calls from the Los Angeles Times.

"I don't see this as personal," Smith said. "I see it as my job. It's called protecting the safety of the staff and inmates to the best of my ability."

Smith was alarmed in September when blood tests showed elevated levels of barium in three inmates working in the plant, he claimed. Lead, cadmium and barium were also found on surfaces around the facility, though at levels deemed acceptable for human health, he said.

The findings prompted Smith and a second prison safety official to recommend the operation be shut down temporarily to address the problems.

The computer salvaging plant is among a growing number operated by Unicor, a government-run corporation that has used inmate crews for business ventures at prisons nationwide since 1998. Inmates can earn up to $1 an hour breaking apart the computers and sorting the parts.

Smith said prisoners were hesitant to speak out about their concerns out of fear of losing their recycling jobs, among the best paid in the corrections system.

"I'm not a sympathizer by any means," he said, "but they are humans."

Posted on 03/07/05 00:00:00
http://www.modbee.com/local/story/10082344p-10909333c.html

Public Employees for Environmental Responsibility News Release (www.peer.org)

For Immediate Release: March 7, 2005
Contact: Chas Offutt (202) 265-7337

COMPUTER RECYCLING EXPOSES PRISON STAFF AND INMATES TO TOXICS — Prison Industry Safety Concerns Censored From OSHA Investigation

Washington, DC — A prison industry that recycles old computer terminals is under investigation for exposing both prison staff and inmates to harmful levels of toxic materials, according to documents released today by Public Employees for Environmental Responsibility (PEER). Dangers flagged by the prison's own staff have been removed from the response the prison made to the Occupational Safety & Health Administration, which is conducting the review.

The federal penitentiary at Atwater is a maximum-security institution located just outside of Merced in California's great Central Valley. The federal prison industry authority, called UNICOR, has operated a computer recycling plant at Atwater since 2002 but the operation has been plagued by safety problems and shutdowns. Six other federal prisons have similar computer recycling plants.

In late December, the prison's own staff filed an OSHA complaint, alleging that –

· Particles of heavy metals, such as lead, cadmium, barium and beryllium, are released when inmate workers break the glass cathode ray tubes during shipping and disassembling;

· The UNICOR factory at Atwater provides an open food service in the contaminated work areas; and

· Neither prison staff nor inmates were informed of health risks. No training on handling contaminants is provided. Blood and urine monitoring is incomplete.

In his initial draft response to OSHA, the warden at Atwater acknowledged many of these problems. The Federal Bureau of Prisons headquarters, however, removed most of admissions of fault from its final response that was sent out on February 11, 2005. Institution staff at Atwater promptly wrote the warden to protest the changes and challenge the accuracy of the final report to OSHA.

"The concern is not only about prisoners but about staff who go home with toxic dust on their clothes and risk spreading contamination to their families," stated PEER Executive Director Jeff Ruch, noting that wipe samples taken off skin, clothing, floors and work surfaces showed dangerous levels of hazardous dust. "Recycling computer parts is inherently a dirty business but it does not have to be a deadly one."

In recent months, both the State of California and Dell, the country's largest computer maker, have cancelled their computer recycling contracts with UNICOR. Last month, the U.S. Environmental Protection Agency also suspended its contract. None of these moves, however, were prompted by safety concerns but all have the effect of placing greater economic pressure on keeping costs low for the remaining UNICOR computer clients.

"At a time when budgets are getting thinner, the temptation to cut corners and put workers at risk becomes even greater," Ruch added, pointing to the larger question as to whether UNICOR is equipped to handle electronic waste safely. "At the very least, there needs to be an independent investigation into

what is going on at Atwater."

The Federal Bureau of Prisons is an agency within the U.S. Department of Justice. Thus, the new U.S. Attorney General, Alberto Gonzales, now oversees one of the largest prison systems in the world.

###

Read memo from Atwater Prison safety staff outlining problems in the computer recycling operation

View the OSHA notice

See Atwater Prison's original response to OSHA

Look at the final response from Atwater Prison to OSHA after changes from the Federal Bureau of Prisons Central Office

Read letter of protest from Atwater prison safety staff

Photos of the computer recycling program at Atwater Federal Prison

Penitentiary staff, inmates possibly exposed to toxins

THE ASSOCIATED PRESS
Last Updated: March 7, 2005, 04:15:26 AM PST

ATWATER -- Officials have begun investigating complaints that a computer recycling plant at the federal prison in Atwater exposed inmates and guards to toxic contaminants.

The U.S. Occupational Safety and Health Administration probe followed allegations by a safety manager at Atwater prison that the plant kicks up dust containing lead, cadmium and barium.

The hazardous metals, found in the computers smashed open by prison labor crews as they scavenge reusable parts, posed a health risk to 120 convicts along with staff who breathe the contaminated air, said Leroy Smith, the safety official.

Smith lodged a complaint with OSHA on Jan. 24. Investigators were reviewing the prison's Feb. 11 response and could inspect the facility, said Frank Strasheim, an OSHA regional administrator.

"That is part of the process if we are not satisfied with the results," Strasheim said. "What we are after when problems persist is corrective action."

Smith accused prison officials of agreeing to only superficial fixes and playing down the safety risks in their reply to OSHA.

Officials at the prison did not return repeated phone calls from the Los Angeles Times.

"I don't see this as personal," Smith said. "I see it as my job. It's called protecting the safety of the staff and inmates to the best of my ability."

Smith was alarmed last September when blood tests showed elevated levels of barium in three inmates working in the plant, he said. Lead, cadmium and barium were also detected on surfaces around the facility, though at levels deemed acceptable for human health, he said.

The findings prompted Smith and another prison safety official to recommend the operation be shut down temporarily to address the problems.

The computer salvaging plant is among a growing number operated by Unicor, a government-run corporation that uses inmate crews for business ventures, at prisons nationwide since 1998. Inmates can earn up to $1 an hour breaking apart the computers and sorting the parts.

Smith said prisoners were hesitant to speak out about their concerns out of fear of losing their recycling jobs, among the best paid in the corrections system.

Los Angeles Times
latimes.com.

http://www.latimes.com/news/local/la-me-toxic6mar06,1,5792446.story?coll=la-headlines-california&ctrack=1&cset=true

Toxics May Be Risk for Prison Recycling Crew

Federal officials are looking into a report that dust at a computer salvaging plant at Atwater poses a danger for inmates and guards.

By Catherine Saillant
Times Staff Writer

March 6, 2005

Federal occupational safety officials are investigating complaints that prison labor crews and staff are exposed to toxic contaminants in a recycling plant at a U.S. penitentiary near Modesto.

A safety manager at Atwater federal prison alleged in a January complaint that 120 convicts, along with some supervisory staff and correctional officers, are exposed to potentially dangerous dust containing lead, cadmium and barium from a recycling operation on the prison grounds.

Atwater is a high-security men's facility south of Modesto in the San Joaquin Valley.

Convicts use hammers to smash open computers, retrieving internal components that are then reused or sold, said Leroy Smith, the prison safety official who filed the complaint with the U.S. Occupational Safety and Health Administration in San Francisco.

Dust with hazardous metals found in computers drifts throughout the factory and warehouse, posing a risk to anyone who comes into contact with it or breathes it, Smith said. The EPA and OSHA have found that long-term exposure to the hazardous metals may cause kidney damage and increase the risk of lung and prostate cancer.

Smith and another prison safety official were so concerned after tests on three inmates showed elevated levels of barium that they recommended the plant be shut down temporarily to fix the problems, he said.

So far, however, the prison has agreed only to superficial fixes, playing down the safety risks in its response to OSHA, Smith said. For that reason, he has decided to go public with his concerns.

"They stopped taking my advice and took away my authority," said Smith, who went out on disability leave in October and is being treated for anxiety and depression related to his complaint. "They tried to make it personal by calling into question my job performance. But I don't see this as personal. I see it as my job. It's called protecting the safety of the staff and inmates to the best of

my ability."

Atwater's warden, Paul M. Schultz, and other prison officials did not return repeated phone calls last week.

Frank Strasheim, federal OSHA's regional administrator in San Francisco, confirmed the probe into Atwater's computer recycling program. The complaint was lodged with OSHA Jan. 24, and prison officials filed a detailed response Feb. 11. Investigators are reviewing that reply.

No on-site inspection of the prison has been conducted, but Strasheim did not rule out that possibility.

"That is part of the process if we are not satisfied with the results," he said. "What we are after [when problems persist] is corrective action."

Since 1998, Unicor, a division of the federal government that uses prison crews in business ventures, has operated an expanding number of computer recycling plants at prisons nationwide, hoping to become a major player in the emerging business. Inmates can earn up to $1 an hour breaking apart the computers and sorting the parts.

But the program has come under fire in recent years by union and environmental groups that charge prisoners are using crude methods to scavenge parts. Inmates wear jumpsuits and work gloves as they smash the machines apart, but do not have goggles, Smith said. Until Tuesday, they ate their lunches within 25 feet of the factory line, exposing their meals to the contaminants, he said.

By contrast, private recycling firms place computer terminals inside a canister to capture any dust and spills when they are smashed open, Smith said. Workers are also protected by goggles, protective suits, gloves and sophisticated ventilation systems, he said.

Jeff Ruch, executive director of Public Employees for Environmental Responsibility, said he is alarmed by the conditions described at Atwater. But the federal prison system has refused to admit there is a problem, much less implement costly safeguards at its Unicor programs in Ohio, New Jersey, Pennsylvania, Florida, Texas, Arizona and California, Ruch said.

"The federal Bureau of Prisons has spent the past three years doing its best to mask the problem," he said. "They have a powerful economic incentive to keep the problem under wraps."

Smith said he became concerned in September when blood tests from three inmates working in the plant revealed elevated levels of barium. Wipe tests on various surfaces in the plant detected the presence of lead, cadmium and barium, though at levels considered acceptable for human health, he said.

Still, Smith and another safety official at the prison believed the problem was serious enough to recommend the operation be shut down while they conducted more testing of workers' blood.

Their recommendations went unheeded, Smith said. His superiors put so much pressure on him to back off, telling him that his actions were "inflammatory and hostile," that he went out on stress leave in October, he said.

In January, he filed his complaint with OSHA. Atwater's written response to the complaint, a copy of which Smith obtained, downplayed the results of blood tests and left out critical

recommendations made by Smith and another safety officer, according to Smith and the documents.

Recommendations to remove air hoses that blow the dust around the factory, to provide better protective gear and to perform random testing of inmates' blood for the presence of contaminants were left out, he said. Smith believes that was done out of fear that it would be too costly to implement. "They don't want to admit there are continuing issues," he said. "It just boils down to money."

Smith said inmates are aware of the problem but don't speak up because they know they will lose their jobs if they do. The recycling plant positions are the best paid in the prison system, he said. Even if the convicts complain, few people listen to them, he said. "I'm not a sympathizer by any means," he said. "But they are humans."

*

Times staff writer Fred Alvarez contributed to this report.

If you want other stories on this topic, search the Archives at **latimes.com/archives**.

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October 27, 2005

The Honorable Scott J. Bloch
Special Counsel
1730 M. Street, N.W., Suite 218
Washington, D.C. 20036-3600

Re: OSC File No. DI-04-2815 & OIA File No. 2005-00010; VIOLATION OF LAW, RULE, OR REGULATION AND SPECIFIC DANGER TO PUBLIC HEALTH OR SAFETY AT THE FEDERAL PRISON INDUSTRY FACTORIES, ATWATER, CALIFORNIA, ELKTON, OHIO, TEXARKANA, ARKANSAS, MARIANNA, FLORIDA, LA TUNA, TEXAS, AND LEWISBURG, PENNSYLVANIA

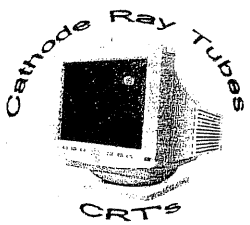
Dear Mr. Bloch

I have received a copy of the Office of Internal Affairs (BOP), Federal Prison Industries (UNICOR), and Federal Bureau of Prisons (BOP) investigation report and alleged findings dated June 13, 2005 and addendum dated August 1, 2005. Please accept comments and attached supporting documentation as a summary and conclusion to the Agencies Investigation and alleged findings.

Sincerely,

Leroy A. Smith Jr.
Occupational Safety and
Environmental Health Manager

A Response to the Agency's Investigation and Alleged Findings



The following will be a point by point summary of each violation of rule, law, or regulation, abuse of authority, substantial danger to public health and safety, retaliation, discrimination, executive staff misconduct, and unprofessional conduct, which a conclusion will be provided as well.

Allegation 1 Response:

The Cathode Ray Tubes contain Lead, Cadmium, Barium, Beryllium, Mercury, Chromium, Arsenic, and Zinc etc. The Central Processing Units contain Lead, Chromium, Silver and other metal sources. The older computer contain Mercury Switches. Batteries seal as Nickel-Cadmium, Lithium or seal lead acid, and fire retardant materials. The OSHA Permissible Exposure Limits at or above the 50 ug/m3 Lead and 5 ug/m3 Cadmium calculated over an eight hour time weighted average triggers a mandatory Compliance Program according to 29 CFR 1910.1025(3)(ii) Lead and 29 CFR 1910.1027(2)(ii). The OSHA Action Level at or above the 30 ug/m3 Lead and 2.5 ug/m3 Cadmium calculated over an eight hour time weighted average triggers a mandatory Medical Surveillance Program according to 29 CFR 1910.1025 (j)(1) Lead and 29 CFR 1910.1027(1)(1)(I) Cadmium.

NOTE: UNICOR was noncompliance with OSHA and EPA guidelines from 1994 through June 1, 2003 at all institutions.

Findings Response:

Paragraph 1 - Pages 6 & 7:

I initially spoke with Mr. Aaron Aragon about my concerns with the CRT's in late 2001 or early 2002. Mr. Aragon stated, "I brought up the same concerns with Mr. Larry Novicky, Computer Recycling Supervisor, Ms. Cindy Keidel, Recycling Program, and Varney Smith, Recycling Program Manager, Central Office before the CRT glass breaking operation was initiated at FCI Elkton. **(Late 1997 or Early 1998)** Mr. Aragon then stated, "Mr. Novicky and Ms. Keidel ignored his concerns at FCI Elkton.

On November 28, 2001, I informed Mr. James M. Slaton, Factory Manager, Mr. Thomas

Stahley, Associate Warden of Industries, Mr. Richard T. Luna, Associate Warden of Operations, that the Cathode Ray Tubes (CRT's) contained lead, cadmium, barium, beryllium, etc. I recommended an Environmental Risk/Health Assessment prior to the CRT booth opening. **(See Attachment 1)**

NOTE: This would of complied with EPA guidelines.

On January 31, 2002, I again informed Mr. Stahley, Mr. Luna, and Mr. Slaton about the hazardous metals associated with the CRT's monitors. Mr. Stahley stated, "UNICOR hasn't conducted any Environmental Assessment because there are no hazards with the CRT monitoring process per Mr. Novicky." I again strongly requested UNICOR to conduct an Environmental Risk/Health Assessment of the CRT monitoring process to ensure there is documented analytical data to support no Health or Environmental concerns exist for our staff and inmate workers. **(See Attachment 2)**

Paragraph 2 - Page 7:

On April 9, 2002, Mr. Stahley opens the glass breaking operation without providing staff or inmates proper personal protective equipment nor respirators. There were no dust masks, ear protection, face shield, nor kevlar sleeves. This can be proven by the amount of daily and weekly inmate injuries we received.

NOTE: UNICOR was noncompliance with OSHA 29 CFR 1910.132 and 29 CFR 1910.134.

On May 9, 2002, I informed Mr. Stahley, Mr. Luna, and Mr. J. T. O'Brien about potential exposure to hazardous metals to staff and inmate workers currently working in the glass breaking operation. As a third reminder, I informed Mr. Stahley, that I strongly request UNICOR to conduct an Environmental Risk/Health Assessment. I the informed them to provide staff and inmates with HEPA Full-Face and Half-Face respirators once their medical cleared, fit tested, and trained on the respirator prior to continuing to breaking of CRT's. **(See Attachment 3)**

Paragraph 3 - Page 7:

Mr. Stahley, Mr. Luna, Mr. Slaton and I felt a three stage filtering booth would need to be purchased instead on the current way of breaking CRT's out on the factory floor, which allowed the hazardous metals to be released into the factory. I initially requested the booth to be installed in the spray paint booth area, which was turned down for security reasons. Then I requested the booth to be constructed in an area near the rear of the factory and have the ventilation exhaust out the factory wall, which Mr. Stahley and Mr. Novicky turned it down because of cost and the Captain rejected the idea because of security reason.

Paragraph 4 - Page 7:

On June 20, 2002, initial Personal Air Sampling was conduct to determine metals

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

November 28, 2001

MEMORANDUM FOR JAMES M SLATON, FACTORY MANAGER

FROM: L. A. Smith, Safety Manager

SUBJECT: CRT Concerns

After receiving the information UNICOR provided on the CRT monitors, the Safety Department has identified the monitors to contain lead, cadmium, and other harmful metals. The future recycling process of the CRT monitors may cause a health concern to staff and inmate workers. As a precautionary measure, the Safety Departments recommends an environmental risk/health assessment be conducted prior to the CRT booth opening. This will ensure the Safety and Health of the UNICOR staff and inmate workers.

If I can provide any further assistance, please do not hesitate to let me know.

cc: Richard T. Luna, Associate Warden Operations
Thomas W. Stahley, Associate Warden Industries

Attachment #1

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

January 31, 2002

MEMORANDUM FOR THOMAS W. STAHLEY, ASSOCIATE WARDEN INDUSTRIES

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **CRT Concerns**

This is to remind you of the Safety Departments previous attempt on November 28, 2001, to address the hazardous metals associated with the CRT monitors. You informed me that UNICOR has not conducted any environmental assessments because there are no hazards with the CRT monitoring process per Mr. Novicky, Larry, UNICOR Central Office. The Safety Department strongly requests UNICOR to conduct an environmental risk/health assessment of the CRT monitoring process to ensure there is documented analytical data to support no health or environmental concerns exist for staff or inmate workers. The Safety Department believe this is paramount to the continued success of the UNICOR Factory.

cc: Richard T. Luna, Associate Warden Operations
James M. Slaton, Factory Manager

If I can provide any further assistance, please do not hesitate to let me know.

Attachment #2

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

May 9, 2002

MEMORANDUM FOR THOMAS W. STAHLEY, ASSOCIATE WARDEN (I&E)

FROM: L. A. Smith, Safety Manager

SUBJECT: Respirator Requirements

I am very concerned with the potential exposure to hazardous metals (i.e. lead, cadmium, and barium etc.) to staff and inmate workers currently working in the glass breaking operation. The Safety Department strongly requests UNICOR to conduct the Environmental and Health Risk Assessment of the CRT glass breaking process to ensure the safety and health of staff and inmate workers. As a precautionary measure the Safety Department requests all staff and inmate workers working in the glass breaking area be provided a HEPA Full Face or Half Face Respirator. Also, staff and inmate workers will need to be medically cleared, fit tested, and trained with the respirator prior to use. The current dust mask being provided to the staff and inmate workers will not protect them from the identified hazardous metals. It is paramount that these environmental and occupational control measures be implemented to ensure staff and inmate workers are protected according to OSHA.

If I can provide any further assistance, please do not hesitate to let me know.

cc: Warden AW(O)

Attachment #3

exposure. Federal Prison Industries **DENIED** my requests for them to conduct initial personal air sampling. On June 27, 2002, the personal air sampling results indicated staff and inmates were exposed to lead and cadmium above the OSHA Action Level and Permissible Exposure Limit. The staff and inmates were **EXPOSED** to **HAZARDOUS METALS** for **NINETY** days. **(See Attachments 4, 4a, 4b, 4c, 4d, 4e, 4f, & 4g)**

NOTE: UNICOR was noncompliance with **OSHA 29 CFR 1910.1025(2) Lead**, Initial determination - Each employer who has a workplace or work operation covered by this standard shall determine if any employee may be exposed to lead at or above the action level and (3)(I) Lead, Basis of initial determination - the employer shall monitor employee exposure and shall base initial determinations on the employee exposure monitoring results. Also, **29 CFR 1910 .1027(d)(1)(i) Cadmium**, Exposure monitoring - each employer who has a workplace or work operation covered by this section shall determine if any employee may be exposed to cadmium at or above the action level. Finally, Environmental Protection Agency (EPA) requires an employer to conduct exposure assessments and metal exposure assessments, and air pollution assessments.

On June 28, 2002, I temporally suspended the glass breaking operation base on the personal air sampling conducted on June 20, 2003, which the results indicated staff and inmates were exposed to lead and cadmium above the OSHA Action Level and Permissible Exposure Limit. I inform Mr. Stahley and Mr. Luna of the following: 1. all staff and inmates working the glass breaking operation will need to have baseline blood and urine tests for lead and cadmium. 2. Need to purchase half-face respirators as a minimum protection level. 3. Identify the location of the respirators to be stored and cleaning equipment for the respirators, staff and inmate will need to be medically clear, fit tested, and trained on the respirator. **(See Attachment 5, & 5a)**

Federal Prison Industries never temporally suspended the glass breaking operation on July 1, 2002. On July 8, 2002, I reminded Mr. Stahley and Mr. Luna a second time, that inmate workers are being exposed above Permissible Exposure Limits (PEL) for lead and cadmium. Also, a hygiene facility (i.e. shower, hand washing station, and changing area) needed to be installed. I also reminded them, the glass breaking operation was to remain temporally suspended until hygiene facilities and additional environmental measures are implemented. **(See Attachment 6)**

NOTE: UNICOR was noncompliance with OSHA 29CFR 1910.1027(j)(1), Hygiene areas and Practices- for employees whose airborne exposure to cadmium is above the PEL, the employer shall provide clean change rooms, hand washing facilities, and showers. This effected all Institution from 1994 through January 2004.

On July 12, 2004, Mr. Korbelak stated, "USP Atwater's test results will have an effect on other institutions Bureau-Wide, which will effect older recycling programs and current recycling programs going online." He then stated, "FCI Elkton had conducted some testing, but he couldn't validate the testing, which they based their decision to conduct the glass breaking operations from the testing results from the company UNICOR sells their glass too, per a conversation with

Industrial Hygiene Report

United States Penitentiary Atwater
UNICOR Computer Demanufacturing Factory

PREPARED FOR

Federal Bureau of Prisons
USP Atwater
1 Federal Way
Atwater, California 95301

PREPARED BY

OCCU-TEC Inc.
6501 East Commerce Avenue, Suite 230
Kansas City, Missouri 64120

June 27, 2002

Attachment #4

SOLUTIONS TO ENVIRONMENTAL AND SAFETY CONCERNS

OCCU-TEC Inc.

6501 E. Commerce, Suite 230
Kansas City, MO 64120
Main Telephone (816) 231-5580
Toll Free 1-800-950-1958
Fax (816) 231-5641

June 27, 2002

Leroy A. Smith, Safety Manager
Federal Bureau of Prisons
USP Atwater
P.O. Box 019000
Atwater, CA 95301

Subject: **Industrial Hygiene Survey**
UNICOR CRT Breaking Operation

Dear Leroy:

Thank you for the opportunity to provide USP Atwater with the subject survey. The following is our report.

BACKGROUND

As requested, OCCU-TEC, Inc. conducted the subject monitoring at USP Atwater. Concentrations of welding fumes (including beryllium, cadmium, cobalt, chromium, copper, iron, manganese, molybdenum, nickel, lead, antimony, vanadium, and zinc), total dust, and respirable dust were assessed in the sampling program. Temperature and relative humidity were also recorded. The monitoring was conducted on June 20, 2002.

METHODOLOGY

One representative personal sample was collected in the glass breaking area and four area samples were collected throughout the UNICOR factory to assess airborne concentrations of the subject contaminants. The samples were obtained in accordance with the "National Institute for Occupational Safety and Health (NIOSH) Manual of Analytical Methods" and/or protocol specified by the American Industrial Hygiene Association (AIHA) accredited laboratory.

Samples were submitted, via overnight delivery service, to the National Loss Control Service Corporation Laboratory (NATLSCO) for analyses. NATLSCO is accredited by AIHA for analyses of industrial hygiene samples.

Attachment #4a.

RESULTS AND DISCUSSION

Lead

The analytical data indicate that the concentration of lead, for the 65-minute personal sampling period evaluated, was 0.099 milligrams per cubic meter (mg/m³). Assuming this is representative of the entire 8-hour period, the predicted 8-hour time-weighted average (TWA) exposure would be 0.099 mg/m³. Area samples for lead concentration were all less than 0.032 mg/m³. The current Occupational Safety and Health Administration (OSHA) permissible exposure limit (PEL) and American Conference of Governmental Industrial Hygienist (ACGIH) threshold limit value (TLC) are 0.050 mg/m³ for an 8-hour TWA exposure. The current OSHA action level is 0.030 mg/m3.

Cadmium

The analytical data indicate that the concentration of cadmium, for the 65-minute personal sampling period evaluated, was 0.05 milligrams per cubic meter (mg/m³). Assuming this is representative of the entire 8-hour period, the predicted 8-hour TWA exposure would be 0.05 mg/m³. Area samples for cadmium concentration were all less than 0.0032 mg/m³. The current PEL and TLV are 0.005 mg/m³ for an 8-hour TWA exposure. The current OSHA action level is 0.0025 mg/m³.

Respirable Dust

The analytical data indicate that the airborne concentrations of respirable dust were below the current PEL of 5 mg/m³ as particulates not otherwise regulated (PNOR) and TLV of 3 mg/m³ for an 8-hour time-weighted average exposure. The sample concentrations for respirable particulate ranged from <0.38 to 1.3 mg/m³.

Total Dust

The analytical data indicate that the levels of total dust were below the current PEL of 15 mg/m³ for an 8-hour time-weighted average exposure as PNOR and TLV of 10 mg/m³ as particulates not otherwise specified (PNOS) for an 8-hour TWA exposure. The sample concentrations were 3.2 mg/m³ or less.

ATTACHMENTS

A summary of the air sampling results is included in Table 1. The data are presented by sample location.

Appendix A, Air Sample Data Sheets, is attached and includes data pertaining to the sample collection. Data include location of sample, total sampling time, sample flow rate, and sample volume. Pump calibration information can also be found in this attachment.

Appendix B, Laboratory Results, includes the laboratory data from NATLSCO.

Attachment # 4b

RECOMMENDATIONS

Based on observations noted during the survey and the analytical results, the following recommendation is offered:

- Due to the potential for personal exposures exceeding the current OSHA PEL and action level for both cadmium and lead, respiratory protection should be provided to persons conducting glass breaking activities until exposures are reduced to levels below the action levels.

- Personal hygiene procedures should be reviewed to ensure persons are thoroughly washing hands following the completion of tasks.

OCCU-TEC appreciates the opportunity to assist you on this project. Please contact us if we can be of further assistance. We look forward to future opportunities to assist USP Atwater.

Sincerely,

Kent R. Wells
Senior Project Manager
OCCU-TEC, Inc.

Attachments

Attachment # 4C

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
CREDIT CARD PURCHASE FORM
(Not for Personal Use Items)

1. Computer Related Purchases -
2. Tool and Equipment Purchases -
3. Furniture Purchases- Inmate/Housing -Fire Resistance Material/CAL 106
4. Chemical Purchases - Chemical Acquisition Form with MSDS must accompany.

Computer Services Manager: _____ Date _____

Captain: _____ Date _____

Safety Manager: _____ Date _____

Safety Manager: _____ Date _____

Facility Manager: _____ Date _____

Vendor Name: Occu-Tec

Phone: 1-800-950-1953

Department: Safety Department

(ALL CREDIT CARD ORDERS ARE FILL OR KILL)

Card Holder Name: P. Rodriguez

Date: 06-06-02

STOCK NO.	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
1	1	ea	Air Monitoring of Unicor (Heavy Metals)	$2424.00	$2,424.00
				$0.00	$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
	1		SHIPPING COST	$0.00	$0.00
				TOTAL AMOUNT	$2,424.00

Fund Control No: P51 - 2002600 (GSA): _____

Card Holder Signature: _____ Date: 6-6-02

Cost Center Manager: ~~Leroy A. Smith Jr.~~, Safety Manager Date: 6-6-02

Warehouse: Date Required: 30 Days Date: $0.00

Original (Cardholder) Copy 1 (Cost Center Manager) Copy 2 (Warehouse)

Attachment # 4d

ACCU-TEC Inc.

6501 E. Commerce, Suite 230
Kansas City, MO 64120
Main Telephone (816) 231-6680
Toll Free 1-800-950-1953
Fax (816) 231-6641

Via Telefacsimile (1.209.386.4695)

Leroy A. Smith, Safety Manager
Federal Bureau of Prisons
USP Atwater
P.O. Box 019000
Atwater, CA 95301

RE: Cost Proposal
Air Monitoring of Computer Demanufacturing Operation

Dear Leroy:

Thank you for the opportunity to submit this proposal to conduct Industrial Hygiene air monitoring at USP Atwater, California. We are pleased to provide the following outline to perform the work requested.

Our Understanding of the Issues

We understand the objective is to select a professional, qualified consulting firm to conduct air monitoring to investigate potential exposures of employees engaged in the computer demanufacturing operation, to include the CRT breaking activities. We will conduct a site visit to your institution to collect an adequate number of air samples to determine if this material poses a threat to employee safety or health.

Our Approach to the Project

Based on your request, we recommend the following approach to this project:

- Conduct personal air monitoring of one worker in the CRT breaking area and area samples in the UNICOR Food Service area and in the UNICOR demanufacturing area.

- Conduct analysis of up to 5 area air samples for lead, cadmium, respirable dust, and total dust. Conduct one personal sample for lead, cadmium, beryllium, cobalt, chromium, copper, iron, manganese, molybdenum, nickel, antimony, vanadium, and zinc.

Attachment #4C

- Provide Air Quality Summary Report comparing observations during our site visit with Permissible Exposure Limit (PELs) and Threshold Limit Value (TLVs).

Schedule

We are committed to begin work upon acceptance of this proposal. Once a firm start date is established, we will finalize the schedule for fieldwork, report generation, and billing.

Fees for Our Services

Professional fees and expenses will be billed monthly and are payable upon receipt. Our estimate for accomplishing this project is a lump sum bid of $2,424.00.

Thank you again for the opportunity to submit a proposal for this project. Please contact me at (816) 231-5580 (Extension 233) with any questions or clarifications you may have.

Sincerely,

Kent R. Wells
Senior Project Manager

F:\SHARC\CLIENT\BOP\USP_Atwater\CRT_Project\CRT_Proposal.doc

Attachment # 4.e

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

June 6, 2002

MEMORANDUM FOR All Concerned

FROM: P. Rodriguez, Safety

SUBJECT: **FYI**

This memorandum is to advise you that several attempts were make to get quotes, for required heavy metals monitoring (Lead, cadmium, and other air borne contaminates) in the Unicor Demanufacturing area.

Below is a list of other environmental companies were bids were requested, for the required testing.

Harding Ese
10265 Rockingham Drive
Sacramento, Ca 95827
916-364-0793

Synagro Of California Inc.
3845 Bithell Lane
Suisun City, Ca 94585
707-483-3730

Attachment # 49

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

June 28, 2002

MEMORANDUM FOR THOMAS W. STAHLEY, ASSOCIATE WARDEN (I&E)

FROM: L. A. Smith, Safety Manager

SUBJECT: Glass Breaking Operation

As a precautionary measure inmate personal air monitoring and area air sampling was conducted on June 20, 2002, by OCCU-TECH Inc. Upon review of the baseline analytical data received on June 27, 2002, which identifies the food area, production line areas, glass breaking area, and upper main office areas as being below the OSHA permissible exposure limit for harmful metals. Also, the inmate personal air sample taken at the point of operation exceeded the OSHA permissible exposure limit for lead and cadmium. Additional sampling will need to be conducted in accordance with OSHA Seven (7) Hour Time Weighted Average (TWA) requirements and personal/area swab testing.

Effective June 28, 2002, the UNICOR Glass Breaking Operation is temporally suspended until the following procedures are implemented:

1. All staff and inmates working in the glass breaking operation and area will need to have a baseline blood test for lead and cadmium.

2. Need to purchase half-face respirators as a minimum protection level requirement. The respirator cartridges need to be able to protect against harmful metals, especially for lead and cadmium. The respirators need to be purchased in small, medium, and large.
(Dan Trujillo, with Jorgerson Company, at 559-268-6241)

3. An area will need to be identified for the location of the respirators to be stored. Proper storage equipment for the respirators will need to be purchased. Also, proper cleaning solutions/equipment for the respirator will need to be purchased, which the respirators will need to be cleaned after each use daily.
(Dan Trujillo, with Jorgerson Company, at 559-268-6241)

Attachment #5

4. The inmates identified to wear the respirators during the glass breaking operation will need to be medically cleared prior to the respirator being worn.

5. The inmates will need to receive respirator training by the Safety Department. Also, will need to be fit-tested prior to wearing the respirator, which will ensure a proper fit and seal of the respirator.

6. All staff and inmates in the glass operation and area will need to be provided formal documented lead training by the Safety Department.

The above mentioned steps will need to be implemented prior to the reactivation of the glass breaking operation. This will be contingent upon the Safety Manager's verification and written approval. This will ensure USP Atwater remains in compliance with Bureau Policy and all Regulatory Agencies.

cc: Associate Warden (O)
Union
Safety File

Attachment #5a

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

July 8, 2002

MEMORANDUM FOR THOMAS W. STAHLEY, ASSOCIATE WARDEN (I&E)

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Computer Monitor (CRT's)**

This is a second reminder that on June 20, 2002, air sampling was conducted in the glass breaking area by Occu-Tech Inc. These sample results indicate inmate workers are being exposed above the Permissible Exposure Limits (PEL) for Lead and Cadmium. OSHA regulatory guidelines require hygiene facilities (i.e., showers, hand washing station, and changing area) be available to workers to reduce exposure. As a precautionary measure the glass breaking area shall be temporally suspended until the a hygiene facility or additional environmental measures can be implemented to ensure the safety and health of staff and inmates.

If I can provide any further assistance, please do not hesitate to let me know.

cc: Associate Warden (O) Safety File Union

Attachment # 6

Mr. Larry Novicky. Mr. Korbelak also stated, the initial baseline testing conducted by USP Atwater appears to be the only reliable test results anyone has been able to present to him for review. **(See Attachment 7. 7a, & 7b and this is mentioned in my Affidavit)**
(These statements from Mr. Korbelak puts in question Allegation 4 Response)

Paragraph 5 - Page 8:

Federal Prison Industries at the Central Office and Safety & Health Division have the knowledge and the resources to ensure these glass breaking operations had Universal Procedures in place and properly designed Ventilation Exhaust Systems before the first computer recycling factory opened. This would be called conducting a Environmental and Health Risk Assessment by an third party. Mr. Schwalb, Assistant Deputy Director of Industries and Mr. Novicky were responsible for ensuring this was conducted and responsible for allowing the staff and inmates workers to continue being exposed from 1994 through 2005.

On May 9, 2002, I the informed them to provide staff and inmates with HEPA Full-Face and Half-Face respirators once their medically cleared, fit tested, and trained on the respirator prior to continuing to breaking of CRT's, which Federal Prison Industries refused to purchase the respirators. **(See Attachment 3)**

On July 18, 2002, I again informed Mr. Stahley, Mr. Luna, and Mr. O'Brien of the type of respirator to be purchased by UNCIOR to ensure adequate protection level for the inmate workers working directly into the booth. **(See Attachments 8 & 8a)**

On July 18, 2002, Mr. Matthew Korbelak, Industrial Hygienist, Central Office and I consulted each other about the initial personal air sampling, which Mr. Koberlak recommended at a minimum half-face, air purifying respirators with HEPA filters per the OSHA standard, 29 CFR 1910.1027(g)(3). This information was also forwarded to Mr. John Lee, Acting National Safety Administrator and Mr. Larry Novicky. **(See Attachment 9)**

NOTE: UNICOR was noncompliance with OSHA 29 CFR 1910.132, OSHA 29 CFR 1910.134, and OSHA 29 CFR 1910.1027(g)(3).

NOTE: UNICOR was noncompliance with Program Statement 1600.08, Chapter 1, Page 24, Section P(1)(2), Personal Protective Equipment - Personal protective equipment such as safety shoes, eye and face protection, hard hats, gloves, respirators, lifelines and harnesses, and hearing protection shall be provided and worn in accordance with OSHA 29 CFR, 1926, Construction Standards and OSHA 29 CFR, 1910.132 Occupational Standards, or as **DEEMED NECESSARY** by the Safety Manager. Protective equipment shall be required where there is a **REASONABLE PROBABILITY** of injury that can be prevented by such equipment. This effected all Institution from 1994 through January 2004. **(See Attachment 10)**

NOTE: UNICOR was noncompliance with Program Statement 1600.08, Chapter 1, Page 5, Section D, IMMINENT HAZARD - When a Safety Manager determines that conditions or

July 12, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Mr. Korbelak**

At approximately 9:35 a.m., Mr. Korbelak called from the Central Office.

Mr. Korbelak informed me, that Barney Smith, Cynthia Keidel, and Larry Novicky from UNICOR Central Office had requested him to look into the glass breaking operation at USP Atwater. Specifically, the air samples and procedures currently in place.

I informed Mr. Korbelak, that all work procedures are according to with EPA 40 CFR 262 and 261.24, OSHA 29 CFR 1910.10025/1910.10027, and Program Statement 1600.08. I also informed Mr. Korbelak, that I would not be able to provide him with any information in writing without Warden O'Brien's approval.

Mr. Korbelak replied, that he understood. He also mentioned, that the current testing results will have an effect on other institutions bureau wide, which will effect older recycling programs and the current recycling program going online.

I informed Mr. Korbelak, that I understand the impact of our testing results, which has supported all my initial environmental and occupational concerns. I also mentioned, that I had requested through Mr. Stahley AW(I&E) any environmental assessments that UNICOR may have conducted on previous recycling programs already up and running in January of this year prior to our recycling program opening. I then mentioned, that Mr. Stahley informed me, that he had spoken with Mr. Novicky Larry, UNICOR Recycling Central Office and that Mr. Novicky informed him that no environmental testing had been conducted because there was nothing to worry about. I finally mentioned, that I strongly encouraged Mr. Stahley to take a computer monitor and send it to a testing lab for testing prior to the glass breaking opening, but Mr. Stahley declined my request based of his conversation with Mr. Novicky.

Mr. Korbelak then stated, " I was informed that Elkton had conducted some testing, but I am not sure how valid the testing results are." He also stated, "UNICOR based their decision to conduct the glass breaking operations from the testing results from the company UNICOR sells the glass too."

Attachment # 7

I then asked Mr. Korbelak, are you saying UNICOR has not conducted any formal environmental assessments of any of their recycling programs and they (UNICOR) have based everything pertaining to occupational and environmental concerns on the same company they sells their glass to, which their work practices/conditions are different from our own?

Mr. Korbelak replied, yes.

I then asked Mr. Korbelak, who informed you of this?

Mr. Korbelak stated, "Larry Novicky during one of our conversations." He also stated, "that the initial baseline sampling conducted by USP Atwater appears to be the only reliable test results anyone has been able to present to him for review."

I informed Mr. Korbelak, that Mr. Smith Varney, UNICOR Recycling Central Office, directed me to provide respirators to the inmate workers and immediately put them back to work. I also mentioned, that with or without the OSHA Action Level or Permissible Exposure Limits being exceeded for lead and cadmium there are more guidelines to establish the just giving inmate respirator. I then mentioned, that a full blown lead and cadmium program would need to be implemented, such as training awareness, handling procedures, housekeeping, and hygiene procedures etc.

Mr. Korbelak agreed. He also stated, "that initial baseline blood and urine tests of staff and inmate workers would need to be conducted to protect the agency from any liability.

Mr. Korbelak then asked, what type of filtering system are we currently using? Does it exhaust out of the glass breaking area on it's own ducting, does it exhaust out with the main institution ducting system, or does it recycle within the glass breaking operation area?

I informed Mr. Korbelak, that the exhaust system circulates within the glass breaking operation area.

Mr. Korbelak then asked, what type of filters are being used, are they primary white filters that catches the bulk of the metals and a HEPA filter to catch the much smaller particulate's prior to exhausting back into the glass breaking area?

I informed Mr. Korbelak, that the first filter is a white pad with a secondary sock filter. I also informed Mr. Korbelak, that I had requested through Mr. Stahley and Mr. Novicky that the booth be equipt with HEPA filters because the exhaust system filter directly back into the factory and glass breaking area, but they refused based on the cost of the HEPA filter.

Mr. Korbelak replied, that it was good to have some type of filtering system in place or we would be having more serious problems to be discussing.

I mentioned to Mr. Korbelak, that has been my concern as well, because UNICOR originally wanted to conduct the glass breaking out in the open or outside the factory near the UNICOR warehouse.

attachment #7a

Mr. Korbelak then asked about the samples taken. Specifically, the one sample that had much higher exposure than all of the rest.

I informed Mr. Korbelak, that the air sampling tests taken were to give use an initial baseline, which would help us determine if there are any hazardous metals being released into the air. I also mentioned, that the air sample that was higher then the rest was a personal air sample taken at the inmate workers breathing zone.

Mr. Korbelak then mentioned, that explains why the one sample was 300 times over the OSHA Action Level.

I then mentioned to Mr. Korbelak, that the initial air sampling results taken were well worth all the harassment, retaliation, and deformation of character from Novicky, Smith, Stahley, Luna, Tussey, and Lee, which all I did was ensure the safety and health of staff and inmate workers came first and ensure Bureau Policy and all regulatory guideline are met, which is law.

Mr. Korbelak then stated, "the baseline testing you conducted was right on target and I agree with you on the importance of knowing the level of hazardous metals that will effect staff and inmate workers.

I then informed Mr. Korbelak, that I will need to take additional tests to confirm the initial baseline test results, which is required by OSHA.

Mr. Korbelak then mentioned, that he agrees that additional testing needs to be conducted to meet the 8 hour TWA. He also mentioned, that he would need to bring his UNICOR counter parts in the Central Office up to speed on the current Atwater status and educate them on the current guidelines and measures that need to be implemented.

I then asked Mr. Korbelak, have I taken all precautionary measures necessary to comply with OSHA and EPA guidelines?

Mr. Korbelak replied, yes. He also informed me, that he received a letter that I might be interested in seeing.

I asked Mr. Korbelak, are you willing to provide me a copy of the memo for my review?

Mr. Korbelak replied, that he did not see any reason he couldn't provide me a copy, because the staff that provided him a copy didn't request the memorandum to be kept confidential.

I then asked Mr. Korbelak, who wrote the memo and who did they address it too?

Mr. Korbelak replied, the memo was between Mr. Novicky and Mr. Stahley.

I then informed Mr. Kapusta of the conversation with Mr. Korbelak.

Attachment #76

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

July 18, 2002

MEMORANDUM FOR THOMAS W. STAHLEY, ASSOCIATE WARDEN (I&E)

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Respirator Requirements**

I am very concerned with the lead levels being twice the OSHA Permissible Exposure Limit (PEL). The permissible exposure limit for lead is 50 ug.m3 for an 8-hour time-weighted-average, which the projected exposure to staff and inmates is currently 74 ug/m3 for an 8-hour time-weighted-average. Based on the careful review of the e-mail received by Matthew Korbelak, Industrial Hygienist Central Office and the current procedures for glass breaking operation, I am requesting UNICOR to purchase a Full Face Air Purifying Respirator with HEPA Filters. The full face shield must have a ANSI rating for impact protection.

The following decision was based on good sound safety practices. Also, this will provide a high protection factor, provide full face protection, and protection from absorption of lead through staff and inmate eyes.

Per your request on July 18, 2002, I will address policy, which will clarify the Safety Manager responsibility to evaluate and make informed judgement calls on the type and level of protection factor for personal protective equipment.

Program Statement 1600.08, Chapter 1, Page 25, Section 7, A hazardous assessment of Personal Protective Equipment must be conducted.

Program Statement 1600.08, Chapter 1, Page 3, Section 5, Professional judgement shall be exercised when regulation and policy is not item specific.

Program Statement 1600.08, Chapter 1, Page 24, Section P (1), Personal protective equipment such as safety shoes, eye and face protection, hard hats, gloves, respirators, lifelines and

Attachment #8

accordance with 29 CFR, OSHA 1926, Construction Standards, or as deemed necessary by the Safety Manager.

If I can provide any further assistance, please do not hesitate to let me know.

cc: Warden AW(O)

Attachment # 8a

From: Matthew R. Korbelak
To: Leroy Smith
Date: 7/18/02 8:49AM
Subject: respiratory protection

Based on the results of the single personal air sample obtained during glass breaking, the minimum respiratory protection required for the operator is a half-face, air purifying respirator with HEPA filters per the OSHA standard, 29 CFR 1910.1027 (g)(3).

When exposures are 10 times the Permissible exposure limit (PEL) or less, the above respiratory protection (half-face, HEPA) is required. The PEL for cadmium is 5 micrograms per cubic meter of air as an 8-hour, time-weighted average (5 ug/M^3, 8-hr. TWA). Ten times the PEL is 50 ug/M^3 or less as an 8-hr. TWA. The lab result from the sampling was 50 ug/M^3. Given that UNICOR workers have approximately six hours of potential exposure per shift, the calculated 8-hr. TWA for the sampled worker is 38 ug/M^3.

The lead levels were almost twice the OSHA PEL (50 ug/M^3, 8-hr. TWA) for lead. The personal air lead result was 99 ug/M^3. The calculated 8-hr TWA is 74 ug/M^3. The OSHA PEL for lead is 50 ug/M^3, 8-hr TWA. The OSHA lead standard is in 29 CFR 1910.1025.

Higher levels of respiratory protection, full-face or hood, offer eye protection as well. This may be preferable given the nature of the glass breaking operation.

The above is recommended as an interim measure until additional air monitoring establishes conclusive exposure levels.

Note: The above concerns the MINIMUM respiratory protection required by OSHA. Other levels/types of respiratory protection are listed in the OSHA standards for higher exposure levels.

CC: Lee, John L.; Novicky, Larry

Attachment #9

(5) Special purpose and over one ton rated vehicles shall require the operator to receive documented specialized training from the garage foreman.

c. Corrective Actions. Appropriate action may be taken against an operator or incidental operator for any of the following:

(1) The employee is convicted of operating under the intoxicating influence of alcohol, narcotics or pathogenic drugs.

(2) The employee is convicted of leaving the scene of an accident without making his identity known.

(3) A Federal Medical Officer finds the employee fails to meet the required physical standards.

(4) The employee's state license is revoked or suspended.

(5) Operates a motor vehicle in an unsafe or negligent manner.

4. The following forms shall be carried at all times in vehicles used for official Government business, and should, to the extent possible, be completed at the scene of the accident:

a. Operator's Report of Motor Vehicle Accident (SF-91)

b. Statement of Witness (SF-94)

c. Claim for Damage, Injury or Death (SF-95)

P. PERSONAL PROTECTIVE EQUIPMENT

1. Personal protective equipment such as safety shoes, eye and face protection, hard hats, gloves, respirators, lifelines and harnesses, and hearing protection shall be provided and worn in accordance with 29 CFR, OSHA 1926, Construction Standards, or as deemed necessary by the Safety Manager.

2. Protective equipment shall be required where there is a reasonable probability of injury that can be prevented by such equipment. These areas shall be conspicuously marked with hazard warning signs.

3. Safety shoes meeting the requirements of ANSI Z.41 are required in foot hazard areas as designated by local supplement.

Attachment #10

practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm, he shall inform the affected employees of the danger and shut down the work or process until such danger can be eliminated. He shall inform in writing the CEO and Regional Safety Administrator of the hazard and action. Reactivation of the work or process shall be contingent upon the Safety Manager's reinspection and written approval.
(See Attachment 11)

On July 19, 2002, I wrote an Executive Memorandum for Mr. J. T. O'Brien, Warden, to **Mr. Robert M. Haro, Western Regional Director** and **Mr. Steve Schwalb, Assistant Director UNICOR Industries,** addressing the implications locally that our staff and inmates were being exposed to lead, cadmium, barium and the broader implications are that there are at least three similar glass breaking operations throughout the Bureau, especially FCI Elkton, Ohio, FCI Texarkana Texas, and FCI La Tuna, Texas, which to date they have not conducted initial hazardous risk assessments nor in compliance with OSHA guidelines.
(See Attachments 12, 12a, 12b, 12c, 12d, & 12e)

NOTE: Initial test results: 40 CFR 262.11 Hazardous Waste Determination. To determine if the solid waste is a hazardous waste: Lead **EPA Max 5 mg/L liquid form**, UNICOR 1970 mg/kg solid waste, UNICOR 98.3 mg/L liquid form, Cadmium **EPA Max 1 mg/L liquid form**, UNICOR 5.8 mg/kg solid waste, UNICOR 0.29 mg/L liquid waste, Barium **EPA Max 100 mg/L liquid form**, UNICOR 250 mg/kg solid waste, and UNICOR 12.5 mg/L liquid waste. 29 CFR 1926.62 (d) Exposure Assessment. The employer who has a workplace or operation covered by this standard shall initially determine if any employee may be exposed to lead at or above the action level: Lead OSHA Action Level 30 ug/m3, OSHA PEL 50 ug/m3, **UNICOR 99 ug/m3**, Cadmium OSHA Action Level 0.0025 mg/m3, OSHA PEL 0.005 mg/m3, **UNICOR 0.05 mg/m3**.

On July 24, 2002, Inmates personal air sampling and wipe sampling test results indicated we exceed the OSHA AL, PEL and Threshold Limit Value for lead, and exceeded the OSHA AL, PEL for cadmium. The wipe samples for lead ranged from 12 micrograms to 2,300 micrograms, which exceeded the EPA regulatory limits. **(See Attachment 13, 13a, 13b, & 13c,)**

On August 6, 2002, I temporally suspended the glass breaking operation based on the personal air sampling conducted on July 24, 2002, which the results indicated staff and inmates were exposed the Permissible Exposure Limit for Lead and Cadmium. I again informed Mr. Stahley and Mr. Luna, that a shower, hand washing station, and changing area be available to workers to reduce exposure. **(See Attachment #14)**

On August 12, 2002, Mr. O'Brien authorized me to send a shorter version of the Executive Memorandum to other Safety Managers that requested a copy through the Bureau.
(See Attachment 15, 15a, 15b, & 15c)

On August 21, 2002, Mr. Korbelak reviewed the air sampling conducted July 24, 2002, which he required the following: 1. Personal air monitoring every 3 months for lead and every six months for cadmium, 2. provisions for hygiene facilities; showers, hand washing station,

c. Report immediately all hazards or unsafe acts to their supervisors.

d. Report all accidents, injuries, and illnesses to their supervisors.

D. IMMINENT HAZARD. When a Safety Manager determines that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm, he shall inform the affected employees of the danger and shut down the work or process until such danger can be eliminated. He shall inform in writing the CEO and Regional Safety Administrator of the hazard and action. Reactivation of the work or process shall be contingent upon the Safety Manager's reinspection and written approval.

E. TRAINING

1. Safety Trainees. All Safety Trainees shall complete all of the following training courses within 18 months of appointment. Central Office shall provide funding for the training of Bureau-designated trainees. Safety trainees may not be promoted without the National Safety Administrator's concurrence. The Safety Manager shall complete a quarterly evaluation of trainee performance and progress and route it to the Central Office and Regional Safety Administrator through the CEO of the institution.

a. Five-week Safety Management Training Program at the M.S.T.C. Aurora CO.

b. Pest Control Technology. (i.e., Purdue University Home Study Course).

c. Applied Food Service Sanitation (i.e., National Restaurant Association Educational Foundation, Home Study Course).

d. Basic Firefighting. (This training is offered in most states at either a State Fire Training School or State University.) This training is not required for Staff at Institutions without Fire Departments.

e. Employee Compensation Procedures and Forms. (This course is conducted by the Department of Labor/Office of Workers' Compensation Programs at various sites.)

f. A program of on-the-job training shall be completed and documented in accordance with Appendix D.

Attachment # 11

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary

Office of the Warden

Atwater, California 95301

July 19, 2002

MEMORANDUM FOR ROBERT M. HARO, REGIONAL DIRECTOR

FROM: J. T. O'Brien, Warden

SUBJECT: UNICOR Computer Recycling Program
Re: Hazardous Metals Concerns

There have been some deep concerns expressed by some about the direction and events going on at USP Atwater with regards to the above-referenced program. For the record, let me clarify our position. The Safety Office essentially identified two major issues. First, the glass breaking operation resulted in the release of hazardous metals into the air. Second, once the residual hazardous metals were collected in the filtering system, the filters were not handled or disposed of as hazardous waste. The implications locally are that our staff and inmates were being exposed to higher levels of lead, cadmium, barium and other dangerous metals than allowed for by Occupational Safety and Health Act (OSHA), and hazardous waste was not being disposed of in accordance with Environmental Protection Agency (EPA) standards. The broader implications are that there are at least four similar glass breaking operations throughout the Bureau that have been open for a number of years, which to date, have not conducted initial hazardous risk assessments. As you know, non-compliance with OSHA and EPA standards could result in citations and fines, expose the Bureau to future litigation, and further put the health of staff and inmates at risk. Obviously, we could not approach these concerns with a "business as usual" mentality. What follows is our roadmap developed to ensure the safety and health of our staff and inmate workers:

Background

The UNICOR Computer Recycling Program began operation at USP Atwater in April 2002. Prior to opening, the Safety Manager reviewed all relevant Material Safety Data Sheets and discovered

Attachment #12

the computer monitors contained 98 per cent lead and other hazardous metals to include but not limited to arsenic, barium, cadmium, chromium, and mercury. Concerned, he requested any previous analytical data from other UNICOR Computer Recycling Programs. He learned that no other hazardous risk assessments had been conducted. However, based on his insistence, UNICOR did agree to install an internal exhaust filtering system and pay for initial testing of the exhaust filters. The Safety Manager independently contracted for outside testing. The test results are as follows:

Test Results

Test 1. 40 CFR 262.11 Hazardous Waste Determination. To determine if the solid waste is a hazardous waste. When a solid waste exhibits the characteristics of toxicity, which is 5 part per million or greater is defined as hazardous waste.

Testing Results: The Toxicity Characteristic Leaching Procedure (TCLP) is the test method 1311 in "Test Methods" for evaluating solid waste, Physical/Chemical method.[1]

a. Lead
EPA Max 5 mg/L liquid form
UNICOR 1970 mg/kg solid waste
UNICOR 98.3 mg/L liquid form

b. Cadmium
EPA Max 1 mg/L liquid form
UNICOR 5.8 mg/kg solid waste
UNICOR 0.29 mg/L liquid waste

c. Barium
EPA Max 100 mg/L liquid form
UNICOR 250 mg/kg solid waste
UNICOR 12.5 mg/L liquid waste

[1] Laboratory test results on file with American Westech Inc., 4400 Linglestown Road, Harrisburg, PA 17112

Attachment # 12a

c. The need for more extensive air monitoring and swab testing.
d. Determine the level of personal protective equipment protection factor.
e. Determine Hygiene Facilities and Practices.

Measure 3. **Not Implemented: Lead Management Plan.**

Advantages:

a. Compliance with OSHA 1926.1027 for Lead.
b. Identify work practices, housekeeping, respiratory, personal hygiene, medical monitoring, and waste disposal.
c. Identify UNICOR as the responsible party.

Measure 4. **Not Implemented: Respiratory and protective work clothing.**

Advantages:

a. Compliance with OSHA 1910.1027 and 1910.134.
b. Protection to staff and inmate workers.
c. Cleaning and replacement of respirators and work clothing daily.

Conclusion

In conclusion, the Unicor Monitor Glass Breaking Operation at USP Atwater has been temporally suspended pending implementation of the above-referenced corrective measures. The internal exhaust filtering system has been implemented. The initial baseline personal and area air monitoring exposure test has been partially implemented. What remains to be done is the OSHA 8-hour time weighted average personal air sampling and additional personal and work area swab testing. These tests will be conducted during the week of 22-26 July 2002, along with respiratory medical evaluations, respiratory training, and fit testing for staff and inmate workers. The Safety Department has disseminated the initial exposure results to staff and inmate workers. Additionally, UNICOR staff have been offered baseline blood tests to determine the level of exposure to lead and cadmium. We are awaiting the results of baseline blood tests for inmates on the glass breaking work detail. UNICOR should be responsible for funding and developing a Lead Management Plan to meet OSHA guidelines for work practices, housekeeping, respiratory, personal

Attachment #12b

Test 2. 29 CFR 1926.62 (d) Exposure Assessment. The employer who has a workplace or operation covered by this standard shall initially determine if any employee may be exposed to lead at or above the action level.[2]

Testing Results: A positive initial monitoring at or above the action level the employer shall conduct monitoring which is representative of the exposure for each employee in the workplace who is exposed to lead.

(a) Lead	**OSHA Action Level**	**30 ug/m3**
	OSHA PEL	**50 ug/m3**
	UNICOR	99 ug/M3
(b) Cadmium	**OSHA Action Level**	**0.0025 mg/m3**
	OSHA PEL	**0.005 mg/m3**
	UNICOR	0.05 mg/m3

Corrective Measures

Measure 1. **Implemented:** Spray Systems 3-stage Powder Booth.

Advantages:

a. Environmental control measure to reduce the exposure of harmful metals to staff and inmate workers.
b. Control of airborne particulate's inside and outside the glass breaking operation.
c. The three stage exhaust filters, 1st Stage - Ultra Panel Filter for large particulate's, 2nd stage - 2 Pocket Bag Filter for medium particulate's, 3rd Stage - 5 Pocket Final Filter to catch real fine particulate's prior to exhausting back into the glass breaking area.
d. Control and contain the Hazardous Metals.

Measure 2. **Partially Implemented:** Conducted initial baseline personal and area air monitoring exposure assessment.

Advantages:

a. Identify the exposure level to staff and inmates.
b. The need to conduct staff and inmate baseline blood testing requirement.

[2] Laboratory test results on file with NATLSCO Laboratory, 1 Kemper Drive, Long Grove, IL 60049.

Attachment # 12 C

hygiene, medical monitoring, and waste disposal. The implementation of these initiatives will allow the UNICOR Computer Recycling Program to safely resume normal operations. These types of initiatives should be implemented at other UNICOR glass breaking operations Bureau wide.

If you have questions, please do not hesitate to contact me.

cc: Steve Schwalb, Assistant Director Industries, Education and Vocational Division, Central Office

Attachment #12d

Industrial Hygiene Report

United States Penitentiary Atwater
UNICOR Computer Demanufacturing Factory

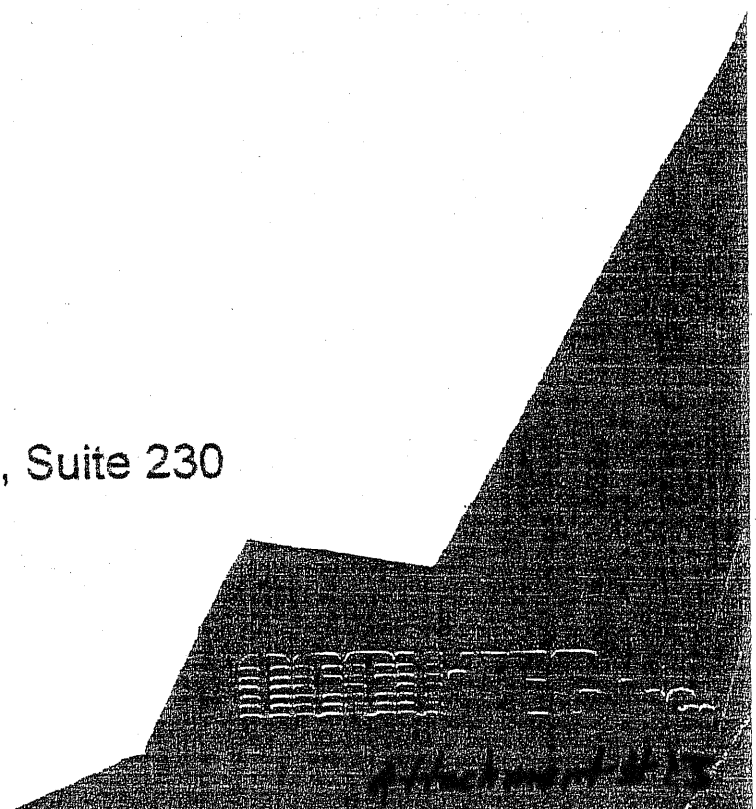
PREPARED FOR

Federal Bureau of Prisons
USP Atwater
1 Federal Way
Atwater, California 95301

PREPARED BY

OCCU-TEC Inc.
6501 East Commerce Avenue, Suite 230
Kansas City, Missouri 64120

August 2, 2002



Attachment #13

OCCU-TEC Inc.

6501 E. Commerce, Suite 230
Kansas City, MO 64120
Main Telephone (816) 231-5580
Toll Free 1-800-950-1953
Fax (816) 231-5641

August 2, 2002

Mr. Thomas Stahley, Associate Warden
Federal Prison Industries - UNICOR
USP Atwater
P.O. Box 019000
Atwater, CA 95301

Subject: **Industrial Hygiene Survey**
Glass Breaking Operation

Dear Mr. Stahley:

Thank you for the opportunity to provide Federal Prison Industries and USP Atwater with the subject survey. The following is our report.

BACKGROUND

As requested, OCCU-TEC, Inc. conducted the subject monitoring at USP Atwater. The monitoring was conduced on July 24, 2002, as a follow-up to the initial baseline screening conducted at the institution on June 20, 2002. Based on the results of the initial baseline screening, concentrations of cadmium and lead were assessed in the sampling program. Temperature and relative humidity were also recorded.

METHODOLOGY

Seven representative personal samples were collected in the Glass Breaking Area. Personal samples were collected on inmates working in the Glass Breaking Area conducting glass breaking, table loading, and quality assurance tasks. Samples were collected throughout the entire duration of the inmate's workshift (approximately 6½ hours).

The personal samples were obtained in accordance with the "National Institute for Occupational Safety and Health (NIOSH) Manual of Analytical Methods" and/or protocol specified by the American Industrial Hygiene Association (AIHA) accredited laboratory.

In addition, 8 lead wipe samples were collected in the Glass Breaking Area and throughout the UNICOR factory to assess the potential for lead contamination throughout the factory. Four wipe samples were from inmates working in the Glass Breaking Area and four samples were collected from various locations inside the UNICOR factory. The area samples were collected following protocols detailed in NIOSH Method 9100, Issue 2, *Lead in Surface Wipe Samples.* Personal wipe samples were taken from the hands and face to determine the potential for ingestion or inhalation. All samples were collected at the completion of the workshift.

Attachment # 15a

All personal and lead wipe samples were submitted, via overnight delivery service, to the National Loss Control Service Corporation Laboratory (NATLSCO) for analyses. NATLSCO is accredited by AIHA for analyses of industrial hygiene samples.

RESULTS AND DISCUSSION

Lead

The analytical data indicate that the concentration of lead was 0.058 milligrams per cubic meter (mg/m^3) or less. The current Occupational Safety and Health Administration (OSHA) permissible exposure limit (PEL) and American Conference of Governmental Industrial Hygienist (ACGIH) threshold limit value (TLV) are 0.05 mg/m^3 for an 8-hour TWA exposure. The current OSHA action level is 0.030 mg/m^3.

One personal sample (Reed) exceeded the current PEL and TLV. In addition, three personal samples (Adkins, Johnson, and Reed) exceeded the current OSHA action level.

Cadmium

The analytical data indicate that the concentration of cadmium was 0.27 mg/m^3 or less. The current PEL and TLV are 0.005 mg/m^3 for an 8-hour TWA exposure. The current OSHA action level is 0.0025 mg/m^3.

Four personal samples (Adkins, Camper, Moreno, and Reed) exceeded the current PEL. In addition, five personal samples (Adkins, Bybee, Camper, Johnson, and Reed) exceeded the current OSHA action level.

Lead Wipe Samples

The analytical data indicate that the concentration of lead in the UNICOR factory ranged from 12 micrograms (µg) to 2,300 µg. Detailed results for the lead wipe samples are presented in the table below.

Sample Type/Location	Results
Personal Sample/Adkins	200 micrograms
Personal Sample/Camper	43 micrograms
Personal Sample/Johnson, T.	29 micrograms
Personal Sample/Reed	130 micrograms
Area Sample/Paint Booth	730 micrograms
Area Sample/Glass Breaking Area No. 2	1,800 micrograms
Area Sample/Food Service Area	12 micrograms
Area Sample/Frame Breaking Area	2,300 micrograms

attachment # 156

ATTACHMENTS

A summary of the air sampling results is included in Table 1. The data are presented by sample location. Appendix A, Air Sample Data Sheets, is attached and includes data pertaining to the sample collection. Data include location of sample, total sampling time, sample flow rate, and sample volume. Pump calibration information can also be found in this attachment. Appendix B, Laboratory Results, includes the laboratory data from NATLSCO.

RECOMMENDATIONS

Based on observations noted during the survey and the analytical results, the following recommendation is offered:

- Due to the potential for personal exposures exceeding the current OSHA PEL and action level for both cadmium and lead, respiratory protection should be provided to persons conducting glass breaking activities.

- Material handling and personal hygiene procedures should be reviewed and incorporated into a Lead and Cadmium Exposure Control Plan.

OCCU-TEC appreciates the opportunity to assist you on this project. Please contact us if we can be of further assistance. We look forward to future opportunities to assist Federal Prison Industries and USP Atwater.

Sincerely,

Kent R. Wells
Senior Project Manager
OCCU-TEC, Inc.

Attachments

attachment # 15C

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

August 06, 2002

MEMORANDUM FOR THOMAS W. STAHLEY, ASSOCIATE WARDEN (I&E)

FROM: L. A. Smith, Safety Manager

SUBJECT: Computer Monitor (CRT's)

On July 24, 2002, air sampling was conducted in the glass breaking area by Occu-Tech Inc. These sample results indicate inmate workers are being exposed above the Permissible Exposure Limits (PEL) for Lead and Cadmium. OSHA regulatory guidelines require hygiene facilities (i.e., showers, hand washing station, and changing area) be available to workers to reduce exposure. As a precautionary measure the glass breaking area shall be temporally suspended until the a hygiene facility or additional environmental measures can be implemented to ensure the safety and health of staff and inmates.

If I can provide any further assistance, please do not hesitate to let me know.

cc: Associate Warden (O) Safety File Union

Attachment #14

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary

Atwater, California 95301

August 12, 2002

MEMORANDUM FOR ALL SAFETY MANAGERS

FROM: /S/
L. A. Smith, Safety Manager

SUBJECT: **UNICOR Computer Recycling Program**
Re: Hazardous Metals Concerns

The Safety Office essentially identified three major issues. First, the glass breaking operation resulted in the release of hazardous metals into the air. Second, once the residual hazardous metals were collected in the filtering system, the filters were not handled or disposed of as hazardous waste. Third, proper personal protective equipment. The implications locally are that our staff and inmates were being exposed to higher levels of lead, cadmium, barium and other dangerous metals than allowed for by Occupational Safety and Health Act (OSHA) nor in accordance with Environmental Protection Agency (EPA) standards. It is recommended that similar glass breaking operations should conduct initial hazardous risk assessments. What follows is our roadmap developed to ensure the safety and health of our staff and inmate workers

Background

The UNICOR Computer Recycling Program began operation at USP Atwater in April 2002. Prior to opening, the Safety Department reviewed all relevant Material Safety Data Sheets and discovered the computer monitors contained 98 per cent lead and other hazardous metals to include but not limited to arsenic, barium, cadmium, chromium, and mercury. Concerned, we requested any previous analytical data from other UNICOR Computer Recycling Programs. We learned that no other hazardous risk assessments had been conducted. UNICOR did install an internal exhaust filtering system and paid for initial testing of the exhaust filters. The Safety Department independently contracted for outside testing for area air monitoring and personal air monitoring. The test results are as follows:

Test Results

Test 1. 40 CFR 262.11 Hazardous Waste Determination. To determine if the solid waste is a hazardous waste. When a solid waste exhibits the characteristics of toxicity, which is 5 part per million or greater is defined as hazardous waste.

Testing Results: The Toxicity Characteristic Leaching Procedure (TCLP) is the test method 1311 in "Test Methods" for evaluating solid waste, Physical/Chemical method.[1]

a.	Lead	**EPA Max 5 mg/L liquid form** UNICOR 1970 mg/kg solid waste UNICOR 98.3 mg/L liquid form
b.	Cadmium	**EPA Max 1 mg/L liquid form** UNICOR 5.8 mg/kg solid waste UNICOR 0.29 mg/L liquid waste
c.	Barium	**EPA Max 100 mg/L liquid form** UNICOR 250 mg/kg solid waste UNICOR 12.5 mg/L liquid waste

[1] Laboratory test results on file with American Westech Inc., 4400 Linglestown Road, Harrisburg, PA 17112

Test 2. 29 CFR 1926.62 (d) Exposure Assessment. The employer who has a workplace or operation covered by this standard shall initially determine if any employee may be exposed to lead at or above the action level.[2]

Testing Results: A positive initial monitoring at or above the action level the employer shall conduct monitoring which is representative of the exposure for each employee in the workplace who is exposed to lead.

(a)	Lead	**OSHA Action Level**	**30 ug/m3**
		OSHA PEL	**50 ug/m3**
		UNICOR	99 ug/M3
(b)	Cadmium	**OSHA Action Level**	**0.0025 mg/m3**
		OSHA PEL	**0.005 mg/m3**
		UNICOR	0.05 mg/m3

[2] Laboratory test results on file with NATLSCO Laboratory, 1 Kemper Drive, Long Grove, IL 60049.

Corrective Measures

Measure 1. **Implemented:** Spray Systems 3-stage Powder Booth.

Advantages:

a. Environmental control measure to reduce the exposure of harmful metals to staff and inmate workers.
b. Control of airborne particulate's inside and outside the glass breaking operation.
c. The three stage exhaust filters, 1st Stage - Ultra Panel Filter for large particulate's, 2nd stage - 2 Pocket Bag Filter for medium particulate's, 3rd Stage - 5 Pocket Final Filter to catch real fine particulate's prior to exhausting back into the glass breaking area.
d. Control and contain the Hazardous Metals.

Measure 2. **Partially Implemented:** Conducted initial baseline personal and area air monitoring exposure assessment.

Advantages:

a. Identify the exposure level to staff and inmates.
b. The need to conduct staff and inmate baseline blood testing requirement.
c. The need for more extensive air monitoring and swab testing.
d. Determine the level of personal protective equipment protection factor.
e. Determine Hygiene Facilities and Practices.

Measure 3. **Not Implemented: Lead Management Plan. (OCCU-TECH Inc. is currently developing Lead Program)**

Advantages:

a. Compliance with OSHA 1926.1027 for Lead.
b. Identify work practices, housekeeping, respiratory, personal hygiene, medical monitoring, and waste disposal.
c. Identify UNICOR as the responsible party.

Measure 4. **Not Implemented: Respiratory and protective work clothing.**

NOTE: **(Full-Face Air Purifying Respirator with HEPA Filters, Full-Face shield must have a ANSI rating for impact protection)**

Advantages:

a. Compliance with OSHA 1910.1027 and 1910.134.
b. Protection to staff and inmate workers.
c. Cleaning and replacement of respirators and work clothing daily.

Conclusion

In conclusion, the Unicor Monitor Glass Breaking Operation at USP Atwater has been temporally suspended pending implementation of the above-referenced corrective measures. The internal exhaust filtering system has been implemented. The initial baseline personal and area air monitoring exposure test has been partially implemented. What remains to be done is the OSHA 8-hour time weighted average personal air sampling and additional personal and work area swab testing. These tests will be conducted during the week of 22-26 July 2002, along with respiratory medical evaluations, respiratory training, fit testing, and lead training for staff and inmate workers. The Safety Department has disseminated the initial exposure results to staff and inmate workers. Additionally, UNICOR staff have been offered baseline blood tests to determine the level of exposure to lead and cadmium. We are awaiting the results of baseline blood tests for inmates on the glass breaking work detail. UNICOR should be responsible for funding and developing a Lead Management Plan to meet OSHA guidelines for work practices, housekeeping, respiratory, personal hygiene, medical monitoring, and waste disposal. Also, funding personal protective equipment and conducting initial risk assessments necessary (i.e., bulk sampling air sampling, and personal air sampling). The implementation of these initiatives will allow the UNICOR Computer Recycling Program to safely conduct normal operations. These types of initiatives should be implemented at other UNICOR glass breaking operations Bureau wide.

If you have questions, please do not hesitate to contact me.

changing area, **3. medical monitoring/periodic blood tests,** 4. signs in regulated area, **5. labeling of shipping and storage containers, 6. respiratory protection and personal protective equipment**, and 6. training of workers. This information was sent to Mr. Novicky and forwarded to Mr. Stahley, Mr. Steve Tussey, National Safety Administrator, Central Office, and myself. **(See Attachment 16)**

NOTE: The highlighted requirements were the only things implemented.

NOTE: UNICOR only conducted blood and urine testing for inmate workers only.

NOTE: UNICOR was noncompliance with OSHA 29CFR 1910.1025 Lead and OSHA 29 CFR 1910.1027 Cadmium, which was mandatory when exposures exceed the PEL.

On August 2, 2002, Federal Prison Industries never temporally suspended the glass breaking operation, nor on August 6, 2002. On August 22, I reminded Mr. Stahley and Mr. Luna a second time, that inmate workers are being exposed above Permissible Exposure Limits (PEL) for lead and cadmium. I again informed Mr. Stahley and Mr. Luna, that a shower, hand washing station, and changing area be available to workers to reduce exposure. **(See Attachment #17)**

On August 28, 2002, Mr. Steve Tussey, National Safety Administrator and Mr. John Lee, National Assistant Administrator called the Safety Manager to discuss the executive memorandum being sent out to other institutions. Mr. Tussey mentioned that this was going to be his first official **ASS Chewing**. Mr. Tussey then mentioned that Mr. Novicky and others who read this memorandum were pretty upset. The Safety Manager mentioned that Mr. Novicky should be upset for not conducting environmental assessments prior to opening any computer recycling programs. Mr. Tussey also mentioned that this memorandum may have **Union** and **Litigation** issues. The Safety Manager then mentioned that UNICOR was aware of these environmental concerns and it took them **six weeks** or more to look at **shutting down** any of the other operations, which directly effect the health of our staff and inmate employees Bureau-wide. **(See Attachments 18, 18a, 18b, & 18c)**

Paragraph 6 - Page 8:

I would continue to request Federal Prison Industries to temporally suspend the glass breaking operation from June 2002 through January 2004, which FPI would re-open the glass breaking operation without my re-inspection and in writing.

NOTE: UNICOR was noncompliance with Executive Order 12196, OSHA 29 CFR 1960, Program Statement 1600.08, OSHA 29 CFR 1910.1025 Lead, & OSHA 29 CFR 1910.1027 Cadmium, which includes all the old computer recycling programs.

Upon the Safety Departments request at USP Atwater, Federal Prison Industries arranged for Mr. Korbelak, to conduct only two Technical Assistance Visits **ONLY** at USP Atwater:

From: Matthew R. Korbelak
To: Novicky, Larry
Date: Wed, Aug 21, 2002 3:57 PM
Subject: Atwater Sampling Results

Today I reviewed the results from air samples collected on July 24, 2002 at USP Atwater in the glass breaking area of the UNICOR factory. The results indicate that workers are exposed above the permissible exposure limits (PEL) for lead and cadmium. OSHA regulations for both of these metals, 29 CFR 1910.1025 (lead) and 29 CFR 1910.1027 (cadmium), require that the following actions (not limited to) be implemented when exposures exceed the PEL:

- personal air monitoring every 3 months for lead and every 6 months for cadmium

- provision of hygiene facilities; showers, hand washing station, changing area.

- medical monitoring including periodic blood tests

- signs in regulated areas

- labeling of shipping and storage containers

- respiratory protection and other personal protective equipment (covered in your memorandum of August 13, 2002)

- training of workers

Please feel free to contact me to discuss any of these items in further detail.

CC: Leroy Smith; Stahley, Thomas; Tussey, Steve

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

August 22, 2002

MEMORANDUM FOR THOMAS W. STAHLEY, ASSOCIATE WARDEN (I&E)

FROM: L. A. Smith, Safety Manager

SUBJECT: Computer Monitor (CRT's)

On July 24, 2002, air sampling was conducted in the glass breaking area by Occu-Tech Inc. These sample results indicate inmate workers are being exposed above the Permissible Exposure Limits (PEL) for Lead and Cadmium. OSHA regulatory guidelines require hygiene facilities (i.e., showers, hand washing station, and changing area) be available to workers to reduce exposure. As a precautionary measure the glass breaking area shall be temporally suspended until the a hygiene facility or additional environmental measures can be implemented to ensure the safety and health of staff and inmates.

If I can provide any further assistance, please do not hesitate to let me know.

cc: Associate Warden (O) Safety File Union

Attachment #13

August 28, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: L. A. Smith Jr., Safety Manager

SUBJECT: Conversation with Steve Tussey, National Safety Administrator and Mr. John Lee, Assistant National Administrator

On August 27, 2002, I received a phone from Mr. Tussey, National Safety Administrator and Mr. Lee, Assistant National Administrator. The following conversation is for review:

Mr. Tussey stated, that we were on speaker phone and that Mr. Lee was the only person present in his office.

Mr. Tussey also stated, that this was going to be his first official ass chewing.

I asked Mr. Tussey what he meant by an official ass chewing.

Mr. Tussey replied, that you (Smith) sent out a memorandum dated August 12th to all Safety Managers outlining procedures that need to be implemented in other UNICOR Factories Bureau Wide.

I informed Mr. Tussey, that I did send out a memorandum addressing current issues and measures that may assist other glass breaking operations, but I didn't send this memorandum to all institutions Bureau Wide.

Mr. Tussey replied, that the memorandum says all safety managers and that you (Smith) mention that they should implement the measures outlined in the memorandum.

I informed Mr. Tussey, that I did put all safety managers on the memorandum, but the memorandum only went to two institutions who requested our (USP Atwater's) assistance.

I also mentioned, that I did not want to put the safety manager names on the memorandum to protect them from any retaliation or harassment they may receive for requesting this information.

Mr. Tussey stated, that Mr. Larry Novicky and others who read this memorandum were pretty upset.

I informed Mr. Tussey, that Mr. Novicky should be upset for not conducting environmental assessments prior to opening the computer recycling programs, which is protocol according to Bureau Policy, OSHA Guidelines, and EPA Standards, which is the LAW.

Mr. Tussey then stated, that the memorandum may have Union and litigation issues.

I informed Mr. Tussey, that UNICOR was aware of these environmental concerns, which directly effect the health of our staff and inmates. I then asked Mr. Tussey, why doesn't anyone in the Central Office want to address and correct these concerns before they have Union and litigation issues, which we are doing at USP Atwater.

I also informed Mr. Tussey, that I received approval from the Executive staff at USP Atwater prior to sending the informational memorandum out to other institutions concerned with their Recycling Operation.

I then mentioned to Mr. Tussey, that my memo and the actions we have taken at USP Atwater doesn't cause Union or litigation issues, but the actions or lack of actions from UNICOR may cause litigation issues, Union concerns, or outside suspicion.

I again mentioned, that UNICOR has never conducted an Environmental Risk Assessment prior to any of the UNICOR Computer Recycling Programs opening, which several recycling programs have been open for two (2) to four (4) years.

Mr. Tussey then stated, you (Smith) nor your Executive staff have the authority to dictate policy or procedures to the field.

I replied, that the memorandum addresses our (USP Atwater's) concerns and measures that we are taking to ensure the safety and health of our staff and inmates and advising them that if they have a similar operation they may want to conduct similar initiatives at their institution.

I also stated, that we (Agency) have an obligation first to protect staff, inmates, and the environment. I then stated, that I apologize if someone has been embarrassed, because that was not intentions, I was only conducting my job according to Bureau Policy and the Law and that I will always put staff, inmates and the Bureau first before I will allow politics to come between what is wrong verses what is right.

Mr. Tussey asked, how long was your (USP Atwater's) Computer Recycling Program opened prior to conducting initial risk assessment?

I replied, three months, why.

Mr. Tussey then stated, that if you (Smith) had these concerns why didn't you (Smith) conduct the assessment earlier.

I informed Mr. Tussey, that back in November 2001, five months prior to the glass breaking operation opening, I had informed Mr. Slaton, Factory Manager and Mr. Stahley, AW(I&E) that the computer monitors may contain lead and other harmful particulate's.

I also informed Mr. Tussey, that I had asked Mr. Stahley if UNICOR had conducted any environmental assessments to determine the exposure limits to staff or inmates and that Mr. Stahley replied, that he (Stahley) was sure they (UNICOR) had, but he (Stahley) would speak with Mr. Novicky, UNICOR Central Office.

I then informed Mr. Tussey, that in January 2002, two months prior to the glass breaking operation opening, I again addressed the environmental assessment concerns with Mr. Stahley and that

Mr. Stahley stated, that Mr. Novicky informed him (Stahley) that they (UNICOR) had not conducted any environmental assessments because there were no hazards with the computer monitors to assess.

I further informed Mr. Tussey, that Mr. Stahley, Mr. Varney Smith (UNICOR), and Mr. Novicky informed me (Smith) that they based the opening of the UNICOR computer recycling programs throughout the Bureau on analytical data conducted by an outside company who they sell the monitor glass to.

I finally informed Mr. Tussey, that Mr. Novicky made the decision to utilize the analytical data results from an outside company, which we should of conducted our own. I also mentioned, that using these test results is a conflict of interest and a liability the Bureau.

Mr. Tussey replied, that he was not aware of this information, but it does not allow you (Smith) to pass on information nor dictate policy to other UNICOR Factory's or Safety staff.

I informed Mr. Tussey, that I did my job according to Bureau Policy and Regulatory Guidelines. I also stated, that the ball was dropped at the Central Office Level and now everyone is Monday Morning Quarterbacking and deliberately miss directing their responsibility.

I then asked Mr. Tussey, why after we (USP Atwater) identified Lead and Cadmium concerns with the glass breaking operation did it take six (6) weeks for UNICOR to close other glass breaking operations down Bureau wide, especially if everyone was concerned about the health and welfare of staff, inmates, and the environmental impact the lead and cadmium may cause?

Mr. Tussey replied, I was not aware of that.

I mentioned to Mr. Tussey, that the answer to my question is money and inmate productivity.

I then asked Mr. Tussey, why does everyone seem not to be aware of anything when it comes up to the glass breaking operation, but they are quick to retaliate, harass, interfere, and ensure reprisal is directed towards me (Smith) for doing my job, which is clearly in violation with Bureau Policy, OSHA Regulatory Guidelines and the Law.

Mr. Lee stated, no one has said you haven't done your job Leroy, but maybe the way you went about it!!

I replied to Mr. Tussey and Mr. Lee, that everything I have said to you both (Tussey & Lee) has falling on death ears, because it is apparent that both of you (Tussey & Lee) haven't heard a word that I have said, otherwise you both (Tussey & Lee) would be addressing these concerns with UNICOR instead of with me.

I also stated to Mr. Tussey, that this is all a smoke screen to prevent the truth from being seen and heard, which UNICOR did not do their homework before they opened the computer recycling programs and if they did we probably wouldn't be having this conversation because OSHA and EPA measures would be in place.

Mr. Tussey then stated, that he would check into all the issues you (Smith) have discussed, but in the future you (Smith) need to inform us (Tussey & Lee) about any safety concerns that might impact the Bureau and/or the Safety Division negatively.

I informed Mr. Tussey, that I have addressed the concerns associated with the glass breaking operation to those who need to know, including the Central Office Safety, but those who have been given the information seems to fallen on death ears by the lack of responsiveness.

1. On September 4-5, 2002, Mr. Korbelak conducted personal air sampling and a review of the glass breaking operation. The personal air samples showed workers were exposed above the PEL for Cadmium and Lead. If you look at the recommendations Mr. Korbelak never recommended any changes to be implemented for the glass breaking booths exhaust ventilation system on correspondence dated October 1, 2002. **(See Attachments 19, 19a, 19b, 19c, & 19d)**
2. On September 28-30, 2004, Mr. Korbelak conducted personal air sampling and wipe sampling. The air sampling was taken when all three production lines weren't disassembling Cathode Ray Tubes (CRT's) for five to eight months, which the test results would be negative. The wipe samples showed low to high levels of cadmium, lead, barium, and beryllium. He stated, the higher levels of metals could poss a cross-contamination exposure potentially to workers through ingestion. **(See Attachments 20, 20a, 20b, 20c, 20d, 20e, 20f, & 20g)**

NOTE: UNICOR only implemented the removal of the Food Service.

NOTE: UNICOR never implemented the appropriate tools to disassemble the CRT's, which was requested by Mr. Korbelak in 2002 and 2004.

NOTE: Wipe samples are used to comply with OSHA 29 CFR 1910.132 Appendix B, Harmful Dust & EPA Metal Exposure Assessments.

On November 24, 2002, Mr. Korbelak spoke with the Safety Specialist at USP Atwater and advised him against starting up the glass breaking operation. Mr. Korbelak also stated, you may need to conduct additional engineering control measures and sampling to get below the PEL, on the lead and cadmium issues (Correspondence date November 27, 2002.)
(See Attachment 21)

NOTE: This conversation took place because Federal Prison Industries would continue to re-open the glass breaking operations before all safety and environmental engineering controls would be installed.

On November 22, 2002, I temporally suspended the glass breaking operation based on the personal air sampling conducted on November 4, 2002, I informed Mr. Stahley, that inmate workers are being exposed above Permissible Exposure Limits (PEL) for lead and cadmium. Also, a hygiene facility (i.e. shower, hand washing station, and changing area) needed to be installed. **(See Attachment 22)**

NOTE: That Mr. Korbelak and I continued to inform Federal Prison Industries, that the shower, hand washing station, and changing area still needed to be installed according to OSHA 29 CFR 1910. 1027 cadmium. Federal Prison Industries continued time after time refused to install these facilities because of cost.

This is very common for Mr. Novicky not to recall specific conversation or memorandums, which would incriminate him and Federal Prison Industries for violating Bureau Policy, Regulations, and Law. Prime example, on July 10, 2002, Mr. Larry Novicky released a

U.S. Department of Justice

Federal Bureau of Prisons

Washington, D.C. 20534

October 1, 2002

MEMORANDUM FOR J. T. O'Brien, WARDEN
USP ATWATER

FROM: Maryellen Thoms, Assistant Director
Health Services Division

SUBJECT: Technical Assistance Visit

On September 4-5, 2002, Matthew Korbelak, National Industrial Hygienist, was onsite at USP Atwater as requested to monitor and evaluate the computer recycling operation in UNICOR. Findings and recommendations are detailed below.

Findings and Observations

Previous air monitoring of the computer recycling operation revealed that workers were exposed to cadmium and lead above the OSHA permissible exposure limits (PELs). Cadmium and lead are found in the electron gun and funnel glass of typical computer monitors. Monitors were observed being recycled in the following manner:

1) Pallets of monitors are unwrapped and the monitors are placed on a table.
2) The electron gun at the tip of the funnel is broken off with a tap from a metal bar.
3) The monitor is placed face down and the funnel glass is broken with a hammer on all sides. The broken glass falls into a large gaylord box beneath the metal grill.
4) A "middle man" takes the remaining panel glass (screen) and removes the metal clips, when possible, before passing it on to the panel glass station.
5) The panel glass is shattered into a gaylord box with a slapping motion against the metal grill of the table top. The metal band is passed on.
6) The "band man" removes any remaining glass by banging the band on a metal grill.

attachment # 10

The aggressive glass breaking operation created a hazard of glass shards that workers protected themselves from with thick leather gloves, arm guards, face shields, cloth hoods, and one-piece coveralls. As boxes were filled with broken glass, they were carted off and empty boxes were put in place. In order to get the pallet jack in place, several inches of broken glass on the floor around the boxes were observed being shoveled and swept out of the way.

Two scenarios were monitored to see if various engineering controls would reduce exposures. On September 4th, workers misted the inside of the monitors with water from a garden sprayer after the electron gun was broken off. Electron guns were snapped off at a table outside of the ventilation booth. Funnel glass and panel glass were broken inside the booth. Bands were handled outside the booth.

On September 5th, the electron gun snapping and funnel glass breaking operations were put in the booth with workers standing to the side of the table instead of behind tables where their own bodies created turbulence/eddies that drew contaminants into their breathing zone. Since the panel glass is lead-free and space in the booth was limited, it was placed outside the booth, upstream of the middle man and funnel glass breaker.

Lab results and calculated 8-hour, time-weighted averages (8 hr. TWAs) for sampled workers are listed in the attached table for cadmium (Cd) and lead (Pb). Samples 01 (on inmate Jenkins, # 30449-086) and 04 (on inmate Pigott, # 16282-076) were voided due to a dropped cassette and pump fault, respectively. The OSHA PEL for cadmium and lead are 5 micrograms per cubic meter of air (ug/M^3) as an 8 hr. TWA and 50 ug/M^3 as an 8 hr. TWA, respectively. The OSHA action levels for cadmium and lead are 2.5 ug/M^3 as an 8 hr. TWA and 30 ug/M^3 as an 8 hr. TWA, respectively. Calculated 8 hr. TWA exposures that exceed the PELs are in enlarged **bold** type.

As with earlier sampling, neither misting nor repositioning workers and operations in the booth were effective in lowering exposures below regulatory limits. In reviewing the analytical data, it appears that the panel glass operation is exceptionally high for cadmium and lead exposure. This is most likely due to dust and debris accumulating on the screen/panel which is flat on the table surfaces through most of the process.

A review of glass breaking techniques at other facilities revealed that a less aggressive method exists. This method, which reportedly requires only a couple of strategic hammer hits to break funnel and panel glass, reduces the scatter of glass

Attachment #19a

over the floor and lowers dust levels and subsequent exposure to cadmium and lead dusts.

Recommendations

In hopes of establishing glass breaking procedures where worker exposures are below OSHA limits for cadmium and lead, the following recommendations are made:

- Adopt less aggressive glass breaking techniques as used at other UNICOR facilities.
- Reconfigure funnel and panel glass breaking table so workers can stand at the ends of the tables/sideways in the booth. This will best utilize the airflow of the booth to capture/remove harmful dusts from workers' breathing zones.
- Spray a mist of water inside monitors after the electron gun is broken off.
- Create a vented box in which electron guns can be broken off. The vent could exhaust into the large booth.
- Utilize HEPA filter equipped vacuum (shop-vac type) to clean surfaces of dusts and small debris instead of sweeping.

Additional Concerns

While conducting monitoring in the glass breaking area, it was observed that inmates were using tools incorrectly. Wire cutters were used as pliers and screwdrivers were used as chisels. Upon examination of tool kits provided to workers, no pliers were available and prying with screwdrivers was done for lack of appropriate screwdriver tips for the screws encountered on various computer monitors. One particular screw, common to IBM monitors looks like an asterisk with a dot in the middle. The locksmith indicated that the IBM monitor screw did not match the security screws used in the institution. Numerous cuts and scrapes have been reported on the production lines where the monitor casings are disassembled prior to being sent for glass breaking.

It is recommended that appropriate tools be used properly. UNICOR and custody staff should discuss and agree on tools and security necessary for accomplishing this goal. Additionally, inmates should be adequately trained on all tools and techniques to minimize injuries.

If you have any questions or concerns regarding these matter, please do not hesitate contact Steve Tussey, National Safety Administrator at 202-307-2867, ext. 125 or Mr. Korbelak at 202-307-2867 ext. 111.

Attachment #196

cc: Robert M. Haro, Regional Director
Western Regional Office

Steve Schwalb, Assistant Director
Industries, Education and Vocational Training Division

Dave Clements, Regional Safety Administrator
Western Regional Office

Attachment

Attachment #19

Attachment

Air Sampling Data Table

Sample #	Cd Result (ug/M^3)	8 hr. TWA *	Pb Result (ug/M^3)	8 hr. TWA *	Location/Activity
September 4, 2002 Sampling					
02	10.6	**6.63**	69.2	43.3	Inmate Camper, # 02071-196. Breaking panel glass in booth.
03	<1.3	<0.81	3.6	2.25	Inmate Atkins, # 70184-012. Bands. Outside of booth.
05	<1.3	<0.81	4.5	2.81	Inmate Johnson, # 05009-097. Breaking off guns outside of booth.
06	<1.3	<0.81	5	3.13	Inmate Zilitis, # 02096-097. Loading monitors to funnel glass station. In and out of booth.
September 5, 2002 Sampling					
07	30.3	**17.7**	30.8	23.9	Inmate Atkins, # 70184-012. Breaking funnel glass in booth.
13	20.3		68		
08	167	**90.8**	159	**89.1**	Inmate Camper, # 02071-196. Breaking panel glass ~5' outside booth.
14	58.7		76.6		
09	57.9	**34.0**	61.8	38.2	Inmate Pigott, # 16282-076. Middle man in booth.
15	40.3		58.3		
10	10.6	**5.79**	24.4	13.8	Inmate Bybee, # 36029-060. Breaking off guns in booth.
16	3.9		12.7		
11	1.1	0.96	9.3	6.13	Inmate Foote, # 55082-097. Bands. Outside of booth.
17	<3.3		11.8		
12	5.1	2.98	10.2	3.76	Inmate Zilitis, # 02096-097. Loading monitors to gun breaking table. Just outside of booth.
18	<3.4		6.3		
19	<3.5	<2.19	3	1.88	Inmate Freegard, # 31027-086. At Production 1 line. ~25' from glass breaking area.

* 8 hr. TWA in ug/M^3
Cd = cadmium
Pb = lead
ug/M^3 = micrograms per cubic meter of air
8 hr. TWA = 8-hour, time-weighted average

U.S. Department of Justice

Federal Bureau of Prisons

Washington, D.C. 20534
December 2, 2004

MEMORANDUM FOR PAUL SCHULTZ, WARDEN
USP ATWATER

//S//

FROM: Maryellen Thoms, Assistant Director
Health Services Division

SUBJECT: Technical Assistance Visit

As requested, Matthew Korbelak, National Industrial Hygienist, was onsite at USP Atwater on September 28 - 30, 2004, to conduct air monitoring and wipe testing in the UNICOR factory and warehouse to determine potential exposure to metals from handling computer monitors. Findings and recommendations are detailed below.

Air Monitoring

Air sampling was conducted on workers at the UNICOR outside warehouse and in the UNICOR factory who handle monitors and computer equipment but are not involved in the deliberate breaking of the computer monitors. Inmates in the glass breaking operation have already been assessed. During the monitoring, an inmate accidentally broke the electron gun end of a monitor tube while disassembling the casing and related components (sample

[redacted]

OSHA has established permissible exposure levels and action limits for various chemicals in the workplace. Analysis for barium, beryllium, cadmium, and lead was conducted on the air samples collected. Barium coats the inside of the monitor vacuum tubes. Beryllium is typically found in power supplies. Cadmium is a component of the phosphors on the inside of the screen (green dots). Lead is found in the funnel glass of the monitor vacuum tube.

The results of all personal air monitoring were well below the OSHA action levels and personal exposure limits for barium, beryllium, cadmium, and lead (see following and attached data tables). Neither the use of respiratory protection nor the

Attachment #20

requirement to conduct biological monitoring (blood and/or urine tests) are required for workers in the sampled areas/operations. The institution may opt to conduct random biological monitoring (especially in the production areas), the results of which may be used to assess the need for more extensive monitoring.

OSHA levels vs. Sampling Results

Metal	OSHA Action Level	OSHA Permissible Exposure Limit	Range of Sampling Results as 8-hour, time-weighted averages *
Barium	None	0.5 mg/M3	<0.002 - <0.004 mg/M3
Beryllium	None	0.002 mg/M3	<0.0001 - <0.0002 mg/M3
Cadmium	0.0025 mg/M3	0.005 mg/M3	<0.0009 - <0.0020 mg/M3
Lead	0.03 mg/M3	0.05 mg/M3	<0.002 - <0.004 mg/M3

mg/M3 = milligrams per cubic meter of air.
OSHA levels/limits are 8-hour, time-weighted averages.
* 8-hour, time-weighted averages (8-hr TWAs) based on maximum exposure potential of 6.5 hours per shift due to breaks, setup, and tool call.

Note: Lab results were all below the limit of detection. Consequently, calculated 8-hr TWAs are preceded by a 'less than' sign.

Air monitoring was also conducted at a box of monitors where a potential exposure was manufactured to simulate occasional breakages that occur during the separation of glass tubes from the monitor housing and wiring. Workers were not present during this monitoring. Six tubes were broken and three air sampling pumps were placed on the edges of the box to evaluate the extent of release from the breakage.

Air monitoring results from the gaylord box of deliberately broken monitors were below OSHA limits if the area samples were considered to represent workers (8-hour, time-weighted average is based on a maximum exposure time of six hours). No respiratory protection is required for workers involved in operations with occasional monitor breakage.

Wipe Sampling

Wipe samples were collected from various surfaces, including the hands of UNICOR workers, to get relative levels of barium, beryllium, cadmium, and lead. There are no standards or regulatory levels for these metals on surfaces. The highest levels for barium, beryllium, and lead were found on the table tops in the production areas. However, the highest cadmium level

Attachment 920a

was from a sample collected from the top of an unbroken monitor (screen side up) at the top of a palletized stack of monitors stored in the Production 2 area.

Wipe samples from workers' hands were often below the limit of detection with some showing low levels of barium and lead. The only hand sample with cadmium was in production area 3. Though hand samples were among the lowest levels sampled, surfaces with higher levels of metals could pose a cross-contamination exposure potential to workers through ingestion. This potential route of exposure is not regulated.

Two samples [redacted] were collected in the food service/dining area which is in an open corner of the UNICOR factory. One was at a dining table that is used and cleaned every day and had low, but detected, levels of barium and cadmium. The other was from a smooth, slanted top of a cabinet along the wall that had low, but detected, levels of barium , cadmium, and lead.

Recommendations

Factory/Warehouse Operations

Based on the sampling results, it is recommended that personal hygiene, specifically hand washing, be emphasized and maintained. In addition, the prevention of dust accumulation should be met by means of the following:

- Prevent the buildup of dust and associated levels of metals on tabletops by using disposable surfaces (cardboard, butcher paper, etc.)

- Wet wipe and/or vacuum (with a HEPA filtered vacuum cleaner) surfaces throughout the factory and warehouse to prevent the accumulation of metal-bearing dusts.

- Use disposable latex or nitrile gloves under regular work gloves to prevent cross-contamination of metal laden surfaces (including reused work gloves) and workers' skin.

Food Service/Dining Area

29 CFR 1910.141(g)(2) states, "Eating and drinking areas. No employee shall be allowed to consume food or beverages in a toilet room nor in any area exposed to a toxic material." Based on the low levels of metals (toxic material) in the food service/dining area, it is recommended that the food service/dining area be isolated from the factory operations. Besides physically separating the food service/dining area from

Attachment #206

the factory with doors, walls and ceiling surfaces, isolation from factory air/ventilation would also be required to prevent deposition of metals on surfaces in the food service/dining area.

Additional Observation

While conducting sampling, I observed, and numerous workers reported, the improper use of tools and techniques due to the lack of appropriate tools to more safely dismantle monitors. Specifically, security screws in some monitors had to be broken out because no tip was available (these screws and tips are not the type used in the institution). Another type of monitor had deep set screws and the screw drivers could not reach them. Forced breaking of monitor housings when an easier dismantling is an option increases the potential for injuries and the use of additional personal protective equipment. It is recommended that the appropriate tools be provided and used correctly to minimize hazards from dismantling monitors.

If you have any questions or concerns regarding these matters, please contact Steve Tussey, National Safety Administrator at 202-353-8192, or Mr. Korbelak at 202-353-9321.

cc: J. E. Gunja, Regional Director, Western Region
D. Clements, Regional Safety Administrator, Western Region

Attachment # 20 C

Attachment

Air Sampling Data Table

Sample #	Location	Lab Result
092804-01A	UNICOR Outside Warehouse. On inmate [redacted] Rebuilding CPU's.	Ba <0.002 mg/M3 Be <0.0001 mg/M3 Cd <0.0011 mg/M3 Pb <0.002 mg/M3
092804-02A	UNICOR Outside Warehouse. On inmate [redacted] Sorting CPU's, etc.	Ba <0.002 mg/M3 Be <0.0001 mg/M3 Cd <0.0011 mg/M3 Pb <0.002 mg/M3
092804-03A	UNICOR Outside Warehouse. On inmate [redacted] Sorter, palletizes product.	Ba <0.003 mg/M3 Be <0.0001 mg/M3 Cd <0.0013 mg/M3 Pb <0.003 mg/M3
092804-04A	UNICOR Outside Warehouse. On inmate [redacted] Testing monitors.	Ba <0.002 mg/M3 Be <0.0001 mg/M3 Cd <0.0011 mg/M3 Pb <0.002 mg/M3
092804-05A	UNICOR Outside Warehouse. On inmate [redacted] Rebuilding and testing laptops.	Ba <0.002 mg/M3 Be <0.0001 mg/M3 Cd <0.0011 mg/M3 Pb <0.002 mg/M3

Attachment #20d

092804-06A	UNICOR Outside Warehouse. On inmate [redacted]. Sorter, palletizes product.	Ba <0.002 mg/M3 Be <0.0001 mg/M3 Cd <0.0011 mg/M3 Pb <0.002 mg/M3
092904-01A	UNICOR factory. On inmate [redacted] Food service area worker.	Ba <0.003 mg/M3 Be <0.0002 mg/M3 Cd <0.0015 mg/M3 Pb <0.003 mg/M3
092904-02A	UNICOR factory. On inmate [redacted]. Testing monitors.	Ba <0.003 mg/M3 Be <0.0001 mg/M3 Cd <0.0014 mg/M3 Pb <0.003 mg/M3
092904-03A	UNICOR factory. On inmate [redacted]. Material handling - pallets, truck loading.	Ba <0.003 mg/M3 Be <0.0002 mg/M3 Cd <0.0016 mg/M3 Pb <0.003 mg/M3
092905-04A	UNICOR factory. On inmate [redacted] Material handling - pallets, truck loading.	Pump fault - VOID sample
092904-05A	UNICOR factory. On inmate [redacted] Monitor tear-down.	Ba <0.003 mg/M3 Be <0.0001 mg/M3 Cd <0.0015 mg/M3 Pb <0.003 mg/M3

Attachment #20

092904-06A	UNICOR factory. On inmate [redacted] Monitor tear-down.	Ba <0.003 mg/M3 Be <0.0001 mg/M3 Cd <0.0014 mg/M3 Pb <0.003 mg/M3
093004-01A	Gaylord box of monitors outside of UNICOR warehouse. South side of box at the rim.	Ba <0.003 mg/M3 Be <0.0001 mg/M3 Cd <0.0015 mg/M3 Pb <0.003 mg/M3
093004-02A	UNICOR outside warehouse. On inmate [redacted] Handling/loading monitors and styrofoam trays.	Ba <0.004 mg/M3 Be <0.0002 mg/M3 Cd <0.0021 mg/M3 Pb <0.004 mg/M3
093004-03A	UNICOR outside warehouse. On inmate [redacted] Handling/loading monitors and styrofoam trays.	Ba <0.005 mg/M3 Be <0.0002 mg/M3 Cd <0.0025 mg/M3 Pb <0.005 mg/M3
093004-04A	Gaylord box of monitors outside of UNICOR warehouse. East side of box at the rim.	Ba <0.006 mg/M3 Be <0.0003 mg/M3 Cd <0.0028 mg/M3 Pb <0.006 mg/M3
093004-05A	Gaylord box of monitors outside of UNICOR warehouse. West side of box at the rim.	Ba <0.005 mg/M3 Be <0.0003 mg/M3 Cd <0.0027 mg/M3 Pb <0.005 mg/M3

Ba = Barium

Attachment #20f

Be = Beryllium
Cd = Cadmium
Pb = Lead
mg/M3 = milligrams per cubic meter of air

Attachment #209

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

November 27, 2002

MEMORANDUM FOR L. A. SMITH, SAFETY MANAGER

FROM: P. Rodriguez, Safety Specialist

SUBJECT: **Matthew Korbelak, Industrial Hygienist**
Central Office

On Monday November 24, 2002 at approximately 9:15 am, I received a call from Mr. Korbelak, pertaining to a revised memorandum submitted to Mr. Stahley, AW(I&E) by Mr. Smith, Safety Manager, on the UNICOR Glass breaking area.

Mr. Korbelak, advised me that based on the information submitted to him by the Central Office UNICOR operations and his research on this issue, he advised against starting up the glass breaking operation.

Mr. Korbelak, also advised me, that we may need to conduct additional engineering control measure and sampling to get below the PEL, on the lead and cadmium issues.

I advised Mr. Korbelak that I would pass this information to my supervisor, Mr. Smith.

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

November 22, 2002

MEMORANDUM FOR THOMAS W. STAHLEY, ASSOCIATE WARDEN (I&E)

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Computer Monitor (CRT's)**

On November 4, 2002, air sampling was conducted in the glass breaking area by Occu-Tech Inc. These sample results indicate inmate workers are being exposed above the Permissible Exposure Limits (PEL) for Lead and Cadmium. OSHA regulatory guidelines require hygiene facilities (i.e., showers, hand washing station, and changing area) be available to workers to reduce exposure. As a precautionary measure the glass breaking area shall be temporally suspended until the a hygiene facility or additional environmental measures can be implemented to ensure the safety and health of staff and inmates.

If I can provide any further assistance, please do not hesitate to let me know.

cc: Associate Warden (O) Safety File Union

Attachment # 22

memorandum to Mr. Stahley concerning innuendoes and statement s he has heard surrounding the review of the glass breaking operation by the Safety Manager is unprofessional and is to cease immediately. **(See Attachment 23)**

On July 12, 2002, I responded to Mr. Novicky's false allegation, which he misdirected and mislead executive staff and staff Bureau-Wide by not informing them of the environmental concerns that should of been corrected before computer recycling program went online. **(See Attachment 24, 24a, 24b, 24c, 24d, 24e, & 24f)**

On July 15, 2002, Mr. Stahley mentioned he informed Mr. Novicky that the glass breaking operation was not going to re-open by next Wednesday, which Mr. Novicky requested. He then mentioned that Mr. Novicky became very upset and informed him that the glass breaking will re-open until further information had been provided to him in writing. He also mentioned that Mr. Novicky didn't really care what the Warden thought, didn't you people read my memorandum explaining my position. Mr. Stahley then stated, "I want to make it clear I had nothing to do with the content in the memorandum and that I'm appalled with the comments Mr. Novicky had made about you (Safety Manager.)" **(See Attachment 25 & 25a)**

On July 17, 2002, I mentioned that Mr. Novicky deliberately orchestrated misdirection and responsibility for exposing staff and inmate employees to hazardous metals. Mr. Stahley began to laugh and mentioned whether or not he was wrong you will not nor do you deserve an apology from Mr. Novicky or anyone else from UNICOR. **(See Attachment 26 & 26a)**

Paragraph 7 - Page 8:

On November 4, 2002, Inmates personal air monitoring and wipe sampling test results indicated we exceeded the OSHA AL, PEL and TLV for lead, we exceeded the PEL and TLV for cadmium, and we exceeded the current AL. The wipe test on their skin ranged from 2.9 to 15 ug/100 cm2. **(See Attachments 27, 27a, 27b, & 27c)**

On November 22, 2002, I temporally suspended the glass breaking operation based on the personal air sampling conducted on November 4, 2002, I informed Mr. Stahley, that inmate workers are being exposed above Permissible Exposure Limits (PEL) for lead and cadmium. Also, a hygiene facility (i.e. shower, hand washing station, and changing area) needed to be installed. **(See Attachment 22)**

On December 18, 2002, Ms. Keidel, Recycling Program Manager asked for the status on the glass breaking operation. She also asked, have any changes been made to the booth since the last test. **(See Attachments 28 & 28a)**

On December 19, 2002, I informed Ms. Keidel, that OSHA regulation for both metals, 29 CFR 1910.1025 Lead and 29 CFR 1910.1027 Cadmium, require that the following actions (not be limited to) must be implemented when exposure exceeds the PEL. I then informed Ms. Keidel, that as a precautionary measure the glass breaking area shall remain temporally suspended until a

From: Larry Novicky
To: tom@central.unicor.gov
Date: 7/10/02 7:07PM
Subject: Re: Glass breaking

7-11-02

Tom:

Reiterating our conversation of today, I am deeply concerned about the direction and events going on at Atwater concerning the innuendoes and statements I have heard surrounding the review of the glass breaking process by Mr. Leroy Smith. As I stated earlier, I want a complete written documentation of the [redacted] to my attention. Relaying of information verbally, as I have been receiving is completely unacceptable. If there are any concerns about certain aspects of the UNICOR glass recycling activities I want those provided to all parties, in writing, specifically delineating areas of concern. Additionally, I want written parameters of Federal and / or state regulations of which there are any concerns with specific citations of any regulations that apply to these concerns. No further testing is to be performed of any kind until this documentation is done in a professional manner. I plan to share this documentation with Central Office UNICOR and BOP Safety staff to insure all areas are properly addressed. From what I have heard to date, the testing was incorrectly performed. If there are any areas that UNICOR must address in order to be in compliance with all regulations I want a corrective action plan and timetable provided that will meet any areas of concern, (ie respirators, vacuums etc.) The verbal transmittal of accusations and / or innuendoes of noncompliance of UNICOR's Atwater operation is unprofessional and is to cease immediately.

Tom, I want to thank you for your efforts in making sure that FPI Atwater meets or exceeds all environmental requirements, I also share these goals, but we can not allow improperly documented or haste govern the operation of our UNICOR operations. Please share this transmittal with the Warden sothat we are all on the same s

CC: lnovicky@central.unicor.gov

Attachment #23

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

July 12, 2002

MEMORANDUM FOR J. T. O'Brien, Warden

FROM: L. A. Smith, Safety Manager

SUBJECT: False Allegations from Larry Novicky

This memorandum is to clarify the questions and concerns regarding discussions between Mr. Larry Novicky and Mr. Thomas W. Stahley. This appears to be a smoke screen to misdirect the real environmental issues that should have been addressed prior to UNICOR developing and activating any computer recycling product line throughout the Bureau. Their memo implies direct violation of Program Statement 1600.08, Chapter 1, Page 4, Section G, which ensures that employees are not subject to restraint, interference, coercion, discrimination or reprisal for exercising their rights under Executive Order 12196, 29 CFR 1960, or for participating in the Bureau's Safety and Environmental Health Program. I will respond with the following information to clear up any misunderstanding that UNICOR may have:

> **Reiterating our conversation of today, I am deeply concerned about the direction and events going on at Atwater concerning the innuendoes and statements I have heard surrounding the review of the glass breaking process by Mr. Leroy Smith. As I stated earlier, I want a complete written documentation of the events provided to my attention. Relaying of information verbally, as I have been receiving is completely unacceptable.**

Since I have not spoken with Mr. Novicky at anytime, I am very overcome by the statements that Mr. Novicky has expressed to Mr. Stahley. If Mr. Novicky needed any clarification of the purpose of requesting the initial staff and inmate baseline exposure assessments and initial hazardous waste determination I would have provided it to him if proper notification and requests were made through Mr. O'Brien, Warden. I question why anyone would orchestrate the deliberate misdirection of responsibility and delay tactics.

attachment #24

If there are any concerns about certain aspects of the UNICOR glass recycling activities I want those provided to all parties, in writing, specifically delineating areas of concern. Additionally, I want written parameters of Federal and/or State regulations of which there are any concerns with specific citations of any regulations that apply to these concerns.

In November 2001, Mr. Slaton, Factory Manager and Mr. Stahley stated that the computer monitors may contain 95% lead. I asked Mr. Stahley if UNICOR had conduct any initial exposure assessments for lead or any harmful metals. Mr. Stahley stated "I am sure they have, but I will speak with Larry Novicky to make sure." I asked Mr. Stahley if UNICOR has conducted initial exposure assessments to have Mr. Novicky provide us a copy for our records. In December 2001, I asked Mr. Slaton if Mr. Stahley had received any testing results from Mr. Novicky. Mr. Slaton stated that he did not know of any testing results, but he would speak with Mr. Stahley. In January 2002, I spoke with Mr. Stahley about the initial exposure assessment UNICOR may have conducted. Mr. Stahley stated that Mr. Novicky informed him that UNICOR had not conducted any exposure assessments because there were no hazards to assess.

At this time I encouraged Mr. Stahley to take a computer monitor and send it to a certified testing lab for testing to determine if the monitor contained any harmful metals, which we would need to protect our staff and inmates from. Mr. Stahley replied that he was informed by Mr. Novicky that there was nothing to worry about and that he was not going to pay for testing that was not necessary. I informed Mr. Stahley that we currently know the computer monitor contains lead, but what we don't know is what other harmful metals are present. I also informed him that the exposure assessment would determine if our staff and inmates may be exposed at or above the OSHA Action Level. I stated that this is why OSHA requires the employer to take initial baseline assessments to determine the exposure limits if any.
Mr. Stahley replied "that this is UNICOR's responsibility not mine", (Stahley's).

29 CFR 1926. 62 Lead

(a) Scope - This section applies to all construction work where an employee may be occupationally exposed to lead. It includes but is not limited to the following:

(a),(3) New construction, alterations, repair, or renovations of structures, substrates, or portions thereof, that contain lead, **or <u>materials containing lead</u>**.

(3), (d), Exposure Assessment - (1) General (i) Each employer who has a workplace or operation covered by this standard shall **initially determine** if any employee **may be exposed to lead at** or **above the action level**.

(1) Employee information and Training - (1) General. (i) The **employer shall communicate information concerning lead hazards**

Attachment #24a

according to the requirements of OSHA's Hazardous Communication Standard for the construction industry, 29 CFR 1926.59. (1), (ii) For all employees who are subject to exposure to lead at or above the action level on any day or **who are subject to exposure to lead compounds which may cause skin or eye irritation**. The employer shall provide a training program in accordance with paragraph (1)(2) or this section and assure employee participation.

(2) Training Program, (viii) The **employee's right of access to records** under 29 CFR 1910.20.

(3) **Access to information** and training materials. (i) The **employer** shall make **readily available** to all employees **a copy** of this standard and its appendices. (ii) The employer shall provide, upon request, all materials relating to the employee information and training program to affected employees and their **designated** representatives, and the Assistant Secretary and the Director.

29 CFR 1926.21 Safety Training and Education

(2) The employer shall instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or **eliminate any hazards** or **exposure to illness** or injury.

(3) Employees required to handle or use poisons, caustics, and **other harmful substances** shall be instructed regarding the safe handling and use, and **be made aware of the potential hazards, personal hygiene**, and **personal protective measures required.**

> **No further testing is to be performed of any kind until this documentation is done in a professional manner. I plan to share this documentation with Central Office UNICOR and BOP Safety staff to insure all areas are properly addressed. From what I have heard to date, the testing was incorrectly performed. If there are any areas that UNICOR must address in order to be in compliance with all regulations I want a corrective action plan and timetable provided that will meet any areas of concern, (i.e., respirators, vacuums etc.).**

Mr. Stahley has been provided all up to date documentation relating to the glass breaking operation initial baseline exposure assessment and initial hazardous waste determination.

The hazardous waste determination was conducted by American Westech Incorporated. Laboratory Certifications - NELAP accredited by the NJDEP for various solid waste parameters (PA019 & PA031) and PADEP accredited for drinking water microbiology (22-578). The results from the lab indicated a large concentration of lead. There are also Barium and Cadmium found in the sample that can cause health risks. They recommend personal protective equipment devices should be worn and consult OSHA or an industrial health person to aid you. The exhaust filters were collected and submitted for testing by Mr. Stahley.

EPA 40 CFR 262.11 Hazardous waste determination. A person who generates a solid waste as defined in 40 CFR 261.2, must. determine if that waste is a hazardous waste using the following method:

(1) Testing the waste according to the methods set forth in subpart C of 40 CFR part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21.

EPA 40 CFR 261.24 Toxicity characteristic. (A) A solid waste exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedures (TCLP), test method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods. "EPA Publication SW-846, as incorporated by reference in 260.11, the extract from a representative sample of the waste contains any of the contaminants listed in table 1 at the concentration equal to or greater than the respective value given in that table. Where the waste contains less than o.5 percent filterable solids, the waste itself, after filtering using the methodology outlined un Method 1311, is considered to be the extract for the purpose of this section.

(b) A solid waste that exhibits the characteristic of toxicity has the EPA Hazardous Waste Number specified in table 1 which corresponds to the toxic containment causing it to be hazardous.

Table 1 -	Lead 5 part per million/5.0 mg/L	
	Cadmium	1.0 mg/L
	Barium	100 mg/L

Toxicity Characteristic Leaching Procedures (TCLP) Results:

Lead	**1970 mg/kg solid waste**
	98.3 mg/L liquid waste
Cadmium	**5.8 mg/kg solid waste**
	0.29 mg/L liquid waste
Barium	**250 mg/kg solid waste**
	12.5 mg/L liquid waste

The filters being identified as hazardous waste prompt the decisions to take area air sampling and personal air sampling to establish the amount of exposure to staff and inmates.

The initial baseline area air sampling and personal air monitoring was conducted by Occu-Tech Incorporated. Industrial Hygiene Survey - Methodology - samples were obtained in accordance with the "National Institute for Occupational Safety and Health (NIOSH) Manual of Analytical Methods" and/or protocol specified by the American Industrial Hygiene Association (AIHA)accredited laboratory. The sample were submitted to National Loss Control Service Corporation Laboratory (NATLSCO)for analyses. NATLSCO is accredited by AIHA for analyses of industrial hygiene samples.

Attachment #24C

OSHA 29 CFR 1926.62 Lead

(3) Basis of initial determination. (i) Except as provided under paragraphs (d)(3)(iii) and (d)(3)(iv) of this section, the employer shall monitor employee exposures and **shall base initial determinations on the employee exposure monitoring results and any of the following, relevant considerations.**

(A) Any information, observations, or calculations which would indicate employee exposure to lead;

(B) Any previous measurements of airborne lead; **UNICOR has not provided any previous air sample or bulk sampling results.**

(C) **Any employee complaints of symptoms which may be attributable to exposure to lead. "An inmate in the UNICOR glass breaking operation brought to Mr. Stahley's attention that over the last few months he has increasingly been having headaches and been feeling exhausted all the time. Mr. Stahley informed the inmate that there was nothing to worry about."**

(iv) With respect to the tasks listed in paragraph (d)(2)(iv) of this section, where lead is present, until the employer performs an employee exposure assessment as required in paragraph (d) of this section and documents that the employee performing any of the listed tasks is not exposed to lead in excess of 2,500 ug/m3 (50XPEL), **the employer shall treat the employee as if the employee were exposed to lead in excess of 2,500 ug/m3 and shall implement employee protective measures as described in paragraph (d)(2)(v) of this section.**

(v)(A) Appropriate respiratory protection;

(v)(B) Appropriate personal protective clothing and equipment;

(v)(C) Change areas;

(v)(D) Hand washing facilities;

(v)(E) Biological monitoring (i.e., Blood Sampling)

(v)(F) Training;

(4) **Positive initial determination and initial monitoring.** (i) Where a determination conducted under paragraphs (d)(1), (2) and (3) of this section shows the **possibility of any employee exposure at or above the action level the employer shall conduct monitoring which is representative of the exposure for each employee in the workplace who is exposed to lead.**

Results and Discussion; The current Occupational Safety and Health Administration (OSHA) permissible exposure limit (PEL) and American Conference of Governmental Industrial Hygienist (ACGIH) threshold limit value (TLC)are **0.050 mg/m3 for an 8-hour TWA exposure.** The current OSHA Action Level is **0.030 mg/m3.**

Attachment #24d

LEAD;

Initial baseline personal air sampling; the initial analytical data indicated that the concentration of lead, for the 65-minute personal sampling period evaluated, was 0.099 milligrams per cubic meter (mg/m3). Assuming this is representative of the entire 8-hour period, the predicted 8-hour-time-weighted average (TWA) exposure would be 0.099 mg/m3.

The initial area air samples for lead concentration were all less than 0.032 mg/m3.

CADMIUM;

The current PEL and TLV are **0.005 mg/m3 for an 8-hour TWA exposure.** The current OSHA Action Level is **0.0025 mg/m3.**

Initial baseline personal air sampling; the initial analytical data indicated that the concentration of Cadmium, for the 65-minute personal sampling period evaluated, was 0.05 milligrams per cubic meter (mg/m3). Assuming this is representative of the entire 8-hour period, the predicted 8-hour TWA exposure would be 0.05 mg/m3.

The initial area air samples for cadmium concentration were all less than 0.0032 mg.m3.

> **The verbal transmittal of accusations and/or innuendoes of noncompliance of UNICOR's Atwater operation is unprofessional and is to cease immediately.**

All initial exposure assessments and precautionary measures have been based on analytical data provided by a certified company and conducted by a competent person. This analytical data and precautionary measures have been forwarded with the Warden's approval to Mr. Stahley in the form of memorandums.

A competent person according to OSHA is one who is capable of identifying existing and predictable lead hazards in the surroundings or working conditions and who has authority to take prompt corrective measures to eliminate them.

According to Program Statement 1600.08, Chapter 1, Page 5, Section D, When a Safety Manager determines that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm, he **shall inform the affected employees of the danger and shut down the work** or process until such danger can be eliminated. He shall inform in writing the CEO and Regional Safety Administrator of the hazard and action. Reactivation of the work or process shall be contingent upon the Safety Manager's reinspection and written approval.

> **"Tom, I want to thank you for efforts in making sure that FPI Atwater meets or exceeds all environmental requirements, I also share these goals, but we can not allow improperly documented or hasts govern the operation of our UNICOR operations."**

Attachment #24

The Safety Department shares the goals to meet or exceed all the environmental and OSHA requirements. The documentation used by the Safety Department at USP Atwater is common to all institutions. EPA regulatory guidelines, OSHA guidelines and Program Statements, which are recognized by the Bureau of Prisons as the core of information to help Safety Managers make informed decisions and disseminate information to line and executive staff.

If UNICOR has met all applicable regulatory guidelines and has properly documented the same, please provide copies. With this information a more clear assessment of providing procedures for the glass breaking operation and the issuance of personal protective equipment will assist other institutions Bureau wide.

At this time we should not be addressing the competence or incompetence of the Safety Manager at USP Atwater, but we should be working together to resolve these issues so that FPI Atwater may resume factory operations at the earliest possible convenience.

cc: AW(O) AW(I&E) Larry Novicky, Central Office

attachment #24

July 15, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Mr. Stahley**

On July 15, 2002, I went to Mr. Luna's office to update him on the UNICOR training being provided by the Safety Department. When I entered, I noticed Mr. Stahley was sitting in his office. Mr. Luna was not present. I started to leave when Mr. Stahley requested to speak with me.

Mr. Stahley informed me, that he had called Mr. Novicky at home to express his concerns about the memo (July 11, 2003). He also informed me that he was embarrassed by Warden O'Brien seeing the memo and that he did not appreciate the content of the memo because it implied that he had spoken out of pocket. Mr. Stahley then informed me, that he told Mr. Novicky that he was fucking crazy or didn't he think about the impact of the memo.

I replied, that I didn't care what Mr. Novicky had to say because it can't be changed, but having Warden O'Brien knowing and understanding the truth is all that really matters to me.

Mr. Stahley then stated, "I want to make it clear to you that I had nothing to do with the content in the memo and that I'am appalled with the comments Mr. Novicky had made about you (Mr. Smith)."

Mr. Stahley then mentioned, that he informed Mr. Novicky that the glass breaking operation was not going to re-open by next Wednesday, as he (Mr. Novicky) requested. Mr. Stahley also mentioned, that Mr. Novicky became very upset and informed him that the glass breaking operation would re-open until further information had been provided to him in writing.

Mr. Stahley then stated, "I informed Mr. Novicky that Warden O'Brien has made it clear that the glass breaking operation would remain closed until proper measures are implemented to ensure the safety of staff and inmates." Mr. Stahley also stated, "Mr. Novicky mentioned, he did not really care what Warden O'Brien thought, didn't you people read my (Mr. Novicky) memo explaining my position." He finally mentioned, that he informed Mr. Novicky that maybe he should speak with Warden O'Brien himself.

I asked Mr. Stahley, why he even mentioned the glass breaking operation was going to remain closed to Mr. Novicky in the first place?

Mr. Stahley replied, that he (Mr. Stahley) thought he (Mr. Novicky) should know.

I then informed Mr. Stahley, that I thought Warden O'Brien was very clear earlier today about loyalty and about nobody releasing information to anyone without him knowing about it first.

Mr. Luna then entered the office and Mr. Stahley stopped discussing the conversation he had with Mr. Novicky.

I then asked Mr. Stahley if was going to mention the conversation he had with Mr. Novicky to Mr. Luna?

Mr. Stahley replied, "yes."

Mr. Stahley only discussed the second part of our conversation with Mr. Luna. Mr. Stahley then left the office.

I informed Mr. Luna, that there was a first part of the conversation that Mr. Stahley didn't mention.

Mr. Luna asked, "what do you mean?"

I then began to explain to Mr. Luna about the (above mentioned) conversation that Mr. Stahley left out.

Mr. Luna just began to shake his head.

I asked Mr. Luna why did Warden O'Brien mention that I needed a lawyer.

Mr. Luna stated, that prior to entering the Warden's office Mr. Stahley had informed Warden O'Brien that he (Mr. Stahley) had heard that I had some personal issues and concerns, which I may need to speak to a lawyer about.

I informed Mr. Luna, that I had mentioned to him (Mr. Luna) about the conversation Mr. Stahley had with Phil Rodriguez and I about him (Mr. Stahley) needing a lawyer last week.

Mr. Luna replied, "I know."

I mentioned to Mr. Luna, why did Warden O'Brien question my loyalty?

Mr. Luna replied, that Mr. Stahley had mentioned a few things to Warden O'Brien prior to me entering his (Mr. O'Brien) office.

I mentioned to Mr. Luna, that if anyone's loyalty should be questioned, it should be Mr. Stahley's.

I also mentioned to Mr. Luna, that the conversation Mr. Stahley had with Mr. Novicky was a prime example of being disloyal to Warden O'Brien.

Mr. Luna replied, "I know."

I informed Warden O'Brien of the conversation that took place with Mr. Stahley.

Attachment #35

July 17, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Mr. Stahley**

On July 17, 2002, I went to see Ms. Graham, ACA coordinator to discuss some budget concerns I had, when I was approached by Mr. Stahley.

Mr. Stahley informed me, "that Mr. Novicky has been trying to speak with Warden O'Brien."

Mr. Stahley also stated, "that Mr. Novicky wants to apologize for the memorandum he wrote, which was written out of anger and frustration."

I asked Mr. Stahley, why would Mr. Novicky want to apologize to Warden O'Brien, when the written statements in the memo were directed towards me personally?

Mr. Stahley began to laugh and stated, "apologize to you, I don't think that would ever happen."

I asked Mr. Stahley, why would you say that, don't I deserve an apology from Mr. Novicky, which he deliberately orchestrated misdirection and responsibility for possibly exposing staff and inmate workers to hazardous metals?

Mr. Stahley began to laugh again and stated, "whether or not he was wrong, you will not nor do you deserve an apology from Larry or anyone else from UNICOR."

I asked Mr. Stahley, does the Executive staff only deserve an apology when they have been falsely accused or professionally discredited.

Mr. Stahley replied, "yes?"

I then mentioned to Mr. Stahley, I bet Mr. Novicky nor anyone else in UNICOR Central Office including yourself would be laughing at my expense if I filed an agency grievance or law suite.

Mr. Stahley became very quiet and stated, "you go ahead and do that, it won't take you far."

Mr. Stahley then stated, "If you file you will be embarrassing yourself and hurting your career."

Attachment #26

I replied, that I think several people inside and outside this institution have already embarrassed the institution, the Bureau, and themselfs by refusing to do the right thing by the staff and inmates.

I informed Mr. Luna and Warden O'Brien of the conversation with Mr. Stahley on the above date.

Attachment #26a

Industrial Hygiene Report

United States Penitentiary Atwater
UNICOR Computer Demanufacturing Factory

PREPARED FOR

Federal Bureau of Prisons
United States Penitentiary - Atwater
1 Federal Way
P.O. Box 019000
Atwater, California 95301

PREPARED BY

OCCU-TEC Inc.
6501 East Commerce Avenue, Suite 230
Kansas City, Missouri 64120

November 18, 2002

OCCU-TEC Inc.
6601 E. Commerce, Suite 350
Kansas City, MO 64120
Main Telephone (816) 231-5560
Toll Free 1-800-850-1958
Fax (816) 231-6941

November 18, 2002

Mr. Thomas Stahley, Associate Warden
Federal Prison Industries - UNICOR
USP Atwater
P.O. Box 019000
Atwater, CA 95301

Subject: Industrial Hygiene Survey
Glass Breaking Operation

Dear Mr. Stahley:

Thank you for the opportunity to provide Federal Prison Industries and USP Atwater with the subject survey. The following is our report.

BACKGROUND

As requested, OCCU-TEC, Inc. conducted the subject monitoring at USP Atwater. The monitoring was conducted on November 4, 2002, as a follow-up to the initial baseline screening conducted at the institution on June 20, 2002 and full-shift monitoring conducted on July 24, 2002. Based on the results of the previous monitoring, concentrations of cadmium and lead were assessed in the sampling program.

METHODOLOGY

Six representative personal samples were collected in the Glass Breaking Area. Personal samples were collected on inmates working in the Glass Breaking Area conducting various tasks. Samples were collected throughout the duration of the inmate's workshift.

The personal samples were obtained in accordance with the "National Institute for Occupational Safety and Health (NIOSH) Manual of Analytical Methods" and/or protocol specified by the American Industrial Hygiene Association (AIHA) accredited laboratory.

In addition, six lead and cadmium wipe samples were collected from the skin (arms) and clothing of inmates in the Glass Breaking Area to assess the potential for lead and cadmium contamination. The area samples were collected following protocols detailed in NIOSH Method 9100, Issue 2, *Lead in Surface Wipe Samples*. All samples were collected at the completion of the workshift.

Attachment #27a

All personal and wipe samples were submitted, via overnight delivery service, to the National Loss Control Service Corporation Laboratory (NATLSCO) for analyses. NATLSCO is accredited by AIHA for analyses of industrial hygiene samples.

RESULTS AND DISCUSSION

Lead

The analytical data indicate that the airborne concentration of lead was 0.21 milligrams per cubic meter (mg/m^3) or less. The current Occupational Safety and Health Administration (OSHA) permissible exposure limit (PEL) and American Conference of Governmental Industrial Hygienist (ACGIH) threshold limit value (TLV) are 0.050 mg/m^3 for an 8-hour TWA exposure. The current OSHA action level is 0.030 mg/m^3.

Two personal samples (Camper and Atkins) exceeded the current PEL and TLV. In addition, these samples exceeded the current OSHA action level.

Cadmium

The analytical data indicate that the airborne concentration of cadmium was 0.3 mg/m^3 or less. The current PEL is 0.005 mg/m^3 and the TLV is 0.010 mg/m^3 for an 8-hour TWA exposure. The current OSHA action level is 0.0025 mg/m^3.

Five personal samples (Adkins, Camper, Pigott, Jenkins, and Bybee) exceeded the current PEL. In addition, all six personal samples exceeded the current OSHA action level.

Lead and Camium Wipe Samples

The analytical data indicate that the concentration of lead on the inmates' skin ranged from 2.9 to 36 micrograms per 100 square centimeters (µg/100 cm2). The concentration of cadmium on their skin ranged from 2.9 to 15 µg/100 cm2. Detailed results for the wipe samples are presented in the table below.

Sample Type/Location	Cadmium	Lead
Skin /Camper	2.9 µg/100 cm2	2.9 µg/100 cm2
Clothing/Camper	75 µg/100 cm2	22 µg/100 cm2
Skin/Pigott	6.9 µg/100 cm2	10 µg/100 cm2
Skin/Atkins	10 µg/100 cm2	36 µg/100 cm2
Skin/Bybee	15 µg/100 cm2	12 µg/100 cm2
Skin/Jenkins	6.2 µg/100 cm2	7.2 µg/100 cm2

Attachment #276

ATTACHMENTS

A summary of the air sampling results is included in Table 1. The data are presented by sample location. Appendix A, Air Sample Data Sheets, is attached and includes data pertaining to the sample collection. Data include location of sample, total sampling time, sample flow rate, and sample volume. Pump calibration information can also be found in this attachment. Appendix B, Laboratory Results, includes the laboratory data from NATLSCO.

OCCU-TEC appreciates the opportunity to assist you on this project. Please contact us if we can be of further assistance. We look forward to future opportunities to assist Federal Prison Industries and USP Atwater.

Sincerely,

Carl Sharp
Senior Project Manager
OCCU-TEC, Inc.

Attachments

Attachment #27c

From: Cynthia Keidel
To: Smith, Leroy; Stahley, Tom
Date: 12/18/02 10:14AM
Subject: Atwater Glass Operation

Can you gentlemen give me the status of the glass operation please? Have the changes been made to the booth since the last test?

All information is appreciated.

CC: Korbelak, Matthew R.; Novicky, Larry; Smith, Varney

Attachment # 28

Mail Envelope Properties (3E00BBAB.996 : 22 : 39274)

Subject:	Atwater Glass Operation
Creation Date:	12/18/02 10:17AM
From:	Cynthia Keidel
Created By:	GWPD:ckeidel@GWPD.COPO

Recipients

ATWADM1.ATWDOM1
ATW3409 (Leroy Smith)

PO2.BOPMSCO
BOP1331 CC (Matthew R. Korbelak)

central.unicor.gov
COPO.GWPD
lnovicky CC (Larry Novicky)
vasmith CC (Varney Smith)

central.unicor.gov
AR_PO.LOSD
tom (Tom Stahley)

Post Office	**Route**
ATWADM1.ATWDOM1	
PO2.BOPMSCO	
COPO.GWPD	central.unicor.gov
AR_PO.LOSD	central.unicor.gov

Files	**Size**	**Date & Time**
MESSAGE	671	12/18/02 10:17AM

Options

Expiration Date:	None
Priority:	Standard
Reply Requested:	No
Return Notification:	None
Concealed Subject:	No
Security:	Standard

Attachment # 28a

hygiene facility or additional environmental control measure can be implemented. This information was forwarded to Mr. O'Brien, Mr. Luna, Mr. Stahley, Mr. Novicky, Mr. Smith, and Mr. Korbelak. **(See Attachment 29)**

On December 19, 2002, I forward a copy of the above mentioned memorandum to Mr. John Clements, Regional National Administrator, which he replied, good safe move Leroy, I will pass the information on up here! **(See Attachment #30)**

On December 19, 2002, Mr. Lee mentioned I agree with Mr. Korbelak assessment and that you need to protect yourself. He then mentioned you have come out smelling like a rose at this point and UNICOR is looking to set you up for the fall if anything goes wrong. He also mentioned you should only be telling UNICOR what OSHA regulation requirements need to be implemented to operate the glass breaking operation safely and you need to stay away from telling UNICOR what environmental controls measures they should implement. He then mentioned it's UNICOR's responsibility to comply with the OSHA guidelines once you continue to oversee the glass breaking operation because of your willingness to help UNICOR continue operating, UNICOR will use your eagerness to help set you up for the fall if anything goes wrong. He also mentioned you are taking the right steps to ensure UNICOR complies with the OSHA guidelines which you have done your job and it protects you from taking the fall for UNICOR not being in compliance with OSHA. He finally mentioned I don't want to see a good person and safety professional be caught up in all the political mess, but most of all having your family hurt in the process. **(See Attachments 31, & 31a)**

Paragraph 8 - Pages 8 & 9:

I spoke with the inmate that is being accused of tampering with the flap from the glass breaking booth, there are no plastic flaps design for the ventilation or the ventilation exhaust would not allow any of the material to exit the booth through the filtering system, causing a tornado effect within the booth. Also, this inmate was not removed for his job or disciplined for his actions, which placed staff and inmate in harms way.

Paragraph 9 - Page 9:

On January 21, 2003, Inmate personal air sampling indicated we exceeded the current AL, PEL and TLV for cadmium. The wipe test results showed lead on the inmates skin at 3.2 to 61 micrograms, for cadmium 2.8 to 36 micrograms, and for beryllium 2.1 to 11 micrograms exceeded the EPA regulatory limits. The **EXHAUST AIRBORNE CONCENTRATION** for **CADMIUM** exceeded the current OSHA PEL, TLV, and AL. This exhausted into the UNICOR factory exposing staff and inmates. **(See Attachments 32, 32a, 32b, & 32c)**

NOTE: Per the Agencies investigation they admit that an inmate working across from the booth's exhaust was exposed above the AL for Cadmium. I would have to ask, how many other staff and

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

December 19, 2002

MEMORANDUM FOR CYNTHIA KEIDEL, RECYCLE GROUP PROGRAM MANAGER

FROM: /S/
L. A. Smith, Safety Manager

SUBJECT: Computer Monitor (CRT's)

Previously the Central Office Safety and USP Atwater Safety provided UNICOR with new engineering control measures to reduce worker exposures and injuries. These initiatives were implemented to allow the UNICOR Computer Recycling Program to safely resume normal operations. Recent air sampling results indicate that the progressive engineering control measures implemented have significantly lowered the workers exposure. Also the results indicate workers are still exposed above the permissible exposure limits (PEL) for lead and cadmium. OSHA regulations for both of these metals, 29 CFR 1910.125 (lead) and 29 CFR 1910.1027 (cadmium), require that the following actions (not be limited to) must be implemented when exposures exceed the PEL:

1. Personal air monitoring every 3 months for lead and every 6 months for cadmium.

2. Provisions for hygiene facilities; i.e., showers, hand washing station, and changing area.

3. Medical monitoring and periodic blood testing.

In hopes of implementing less aggressive measures to reduce the workers exposure below the OSHA limits for lead and cadmium, the following interim recommendation is made.

1. Contract a Professional Engineer to review and recommend additional engineering methodologies/principles.

2. Implement recommended engineering methodologies/principles and conduct air sampling to determine the level of workers exposure.

As a continued precautionary measure the glass breaking area shall remain temporally suspended until a hygiene facility or additional environmental control measures can be implemented to ensure the safety and health of staff and inmates.

If I can provide any further assistance, please do not hesitate to let me know.

cc: Warden AW (O) AW(I&E) Larry, Novicky Varney, Smith
Matthew, Korbelak Safety File Union

From: John Clements
To: Smith, Leroy
Date: 12/20/02 8:04AM
Subject: Re: Computer Monitor (CRT's)

Good safe move Leroy, I will pass the information on up here!

Have a Merry Christmas, you and your family, including the new Grandbaby!!

Dave

>>> Leroy Smith 12/19/02 06:13PM >>>
Cynthia, per your request I have provided you with the below attachement, which addresses the current status of the USP Atwater's glass breaking operation.

If I can provide ay further assistance, please do not hesitate to let me know.

Attachment # 50

December 19, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith Jr.**

SUBJECT: **Conversation with John Lee, Central Office**

On December 19, 2002 at approximately 10:30 a.m., I spoke with Mr. Lee about the e-mail I received from Cynthia Keidel, UNICOR Central Office concerning the Atwater Glass Breaking Operation.

I mentioned to Mr. Lee, that I wanted to apologize for any misunderstanding over the last year concerning the glass breaking operation that may have been misunderstood with all the negative feedback they where hearing and receiving from Larry Novicky, Central Office and Thomas Stahley, AW(I&E), Atwater.

Mr. Lee replied, that there was no apology necessary. Mr. Lee also mentioned, that I had conducted myself very professionally and that I was doing the right thing by standing firm to ensure the safety of staff and inmates comes first.

I then stated, "thank you for the complement John, I haven't heard to many positive things over the last year since the glass breaking operation issues have come to light."

Mr. Lee then stated, "it always seems that your confronted with serious safety issues no matter where you go, but each time you have always handled it appropriately and in the best interests for all parties."

I again replied, thank you. I then mentioned, that I sent a memorandum to Mr. Stahley regarding the possibility of allowing the glass breaking operation to temporally remain open. I also mentioned, that I received a phone call from Matthew Korbelak, Industrial Hygienist Central Office, which he expressed his concerns about me (Mr. Smith) allowing the glass breaking operation to temporarily remain open and he (Mr. Korbelak) strongly suggested that the glass breaking operation should remain closed until UNICOR implements the measures necessary to comply with the OSHA guidelines for Lead and Cadmium operations.

Mr. Lee then stated, "I agree with Korbelak's assessment and that you (Mr. Smith) need to protect yourself."

I then asked Mr. Lee, what do you mean that I need to protect myself?

Mr. Lee then stated, "you have came out smelling like a rose at this point and UNICOR is looking to set you up for the fall if anything goes wrong."

I again asked Mr. Lee, what are you trying to imply?

Mr. Lee then stated, "you should only be telling UNICOR what OSHA regulation requirements need to be implemented to operate the glass breaking operation safely and you (Mr. Smith) need to stay away from telling UNICOR what environmental control measures they (UNICOR) should be implementing." Mr. Lee also stated, "it's UNICOR's responsibility to comply with the OSHA guidelines once UNICOR has become aware of the Lead and Cadmium concerns, but if you (Mr. Smith) continue to oversee the glass breaking operation because of your willingness to help UNICOR continue operating, UNICOR will use your eagerness to help set you up for the fall if anything goes wrong."

I then mentioned to Mr. Lee, that UNICOR should be more concerned about explaining why their other recycling operations are continuing to operate after becoming aware of Atwater's Lead and Cadmium concerns at high levels, which presents a potential exposure to staff and inmates, and environmental impact. I also mentioned, that I will resend my initial memorandum addressing the glass breaking operation temporarily remaining open, which I thought would help UNICOR, but I guess UNICOR can't see a gift when it smacks them (UNICOR) right in the face. I finally mentioned, that I will address the air sampling results and the steps necessary to comply with the OSHA regulatory guidelines.

Mr. Lee then stated, "you are taking the right steps to ensure UNICOR complies with the OSHA guidelines, which you have done your job and it protects you from taking the fall for UNICOR not being in compliance with OSHA."

I then replied, by thanking Mr. Lee for his insight and courage to come forward and warn me (Mr. Smith) before I become UNICOR'S escape goat.

Mr. Lee then stated, "it is my pleasure, I don't want to see a good person and safety professional be caught up in all the political mess, but most of all having your family hurt in the process."

Attachment #31a

SOLUTIONS TO ENVIRONMENTAL AND SAFETY CONCERNS

OCCU-TEC Inc.

6501 E. Commerce, Suite 230
Kansas City, MO 64120
Main Telephone (816) 231-5580
Toll Free 1-800-950-1953
Fax (816) 231-5641

February 3, 2003

Mr. Thomas Stahley, Associate Warden
Federal Prison Industries - UNICOR
USP Atwater
P.O. Box 019000
Atwater, CA 95301

Subject: Industrial Hygiene Survey
Computer Dismantling Operation

Dear Mr. Stahley:

Thank you for the opportunity to provide Federal Prison Industries and USP Atwater with the subject survey. The following is our report.

BACKGROUND

As requested, OCCU-TEC, Inc. conducted the subject monitoring at USP Atwater. The monitoring was conducted on January 21, 2003, as a follow-up to the previous monitoring. Based on the results of the previous monitoring, concentrations of cadmium and lead were assessed in the sampling program. Concentrations of barium and beryllium were also assessed.

METHODOLOGY

Five representative personal samples were collected in the Glass Breaking Area, two from the monitor dismantling area, and one from the CPU Dismantling area. Personal samples were collected on inmates conducting various tasks. Samples were collected throughout the duration of the inmate's workshift. One area sample was collected near the exhaust outlet of the booth.

The samples were obtained in accordance with the "National Institute for Occupational Safety and Health (NIOSH) Manual of Analytical Methods" and/or protocol specified by the American Industrial Hygiene Association (AIHA) accredited laboratory.

In addition, eight wipe samples were collected from the skin (palm and fingers of hand) of inmates to assess the potential for contamination. The wipe samples were collected following protocols detailed in NIOSH Method 9100, Issue 2, *Lead in Surface Wipe Samples*. All samples were collected at the completion of the workshift.

All personal and wipe samples were submitted, via overnight delivery service, to the National Loss Control Service Corporation Laboratory (NATLSCO) for analyses. NATLSCO is accredited by AIHA for analyses of industrial hygiene samples.

Attachment #32

RESULTS AND DISCUSSION

Lead

The analytical data indicate that the airborne concentration of lead for the personal samples was 0.0011 milligrams per cubic meter (mg/m^3) or less. The current Occupational Safety and Health Administration (OSHA) permissible exposure limit (PEL) and American Conference of Governmental Industrial Hygienist (ACGIH) threshold limit value (TLV) are 0.050 mg/m^3 for an 8-hour TWA exposure. The current OSHA action level is 0.030 mg/m^3.

None of the personal or area samples exceeded the current PEL and TLV. In addition, none of these samples exceeded the current OSHA action level.

The airborne concentration of lead by the exhaust outlet of the booth was 0.021 mg/m^3.

Cadmium

The analytical data indicate that the airborne concentration of cadmium for the personal samples was 0.0037 mg/m^3 or less. The current PEL is 0.005 mg/m^3 and the TLV is 0.010 mg/m^3 for an 8-hour TWA exposure. The current OSHA action level is 0.0025 mg/m^3.

None of the personal samples exceeded the current PEL and TLV. Three personal samples (Camper, Pigott, and Castro) exceeded the current OSHA action level.

The airborne concentration of cadmium by the exhaust outlet of the booth was 0.0088 mg/m^3. This exceeds the PEL, TLV and action level.

Barium

The analytical data indicate that the airborne concentration of barium for the personal samples was <0.0018 milligrams per cubic meter (mg/m^3) or less. The current OSHA PEL and ACGIH TLV are 0.5 mg/m^3 (soluble barium) for an 8-hour TWA exposure.

None of the personal or area samples exceeded the current PEL and TLV.

The airborne concentration of barium by the exhaust outlet of the booth was 0.0038 mg/m^3.

Beryllium

The analytical data indicate that the airborne concentration of beryllium for the personal samples was <0.000091 milligrams per cubic meter (mg/m^3) or less. The current OSHA PEL and ACGIH TLV are 0.002 mg/m^3 for an 8-hour TWA exposure.

None of the personal or area samples exceeded the current PEL and TLV.

The airborne concentration of beryllium by the exhaust outlet of the booth was <0.000083 mg/m^3.

Lead, Cadmium, Barium and Beryllium Wipe Samples

The analytical data indicate that the concentration of lead on the inmates' skin ranged from 3.2 to 61 micrograms per 24 square inches ($\mu g/24\ in^2$). The concentration of cadmium on their skin

Attachment #52a

ranged from 2.8 to 36 µg/24 in^2. The concentration of barium on their skin was <0.1 µg/24 in^2. The concentration of beryllium on their skin ranged from 2.1 to 11 µg/24 in^2. Detailed results for the wipe samples are presented in the table below.

Sample Type/Location	Lead	Cadmium	Barium	Beryllium
Skin /Camper	12 µg/24 in^2	36 µg/24 in^2	<0.1 µg/24 in^2	2.1 µg/24 in^2
Skin/Jenkins	16 µg/24 in^2	10 µg/24 in^2	<0.1 µg/24 in^2	2.5 µg/24 in^2
Skin/Castro	16 µg/24 in^2	10 µg/24 in^2	<0.1 µg/24 in^2	2.5 µg/24 in^2
Skin/Pigott	61 µg/24 in^2	24 µg/24 in^2	<0.1 µg/24 in^2	4 µg/24 in^2
Skin/Atkins	15 µg/24 in^2	12 µg/24 in^2	<0.1 µg/24 in^2	4.4 µg/24 in^2
Skin/Bostick	6.4 µg/24 in^2	2.8 µg/24 in^2	<0.1 µg/24 in^2	3.0 µg/24 in^2
Skin/Woods	3.2 µg/24 in^2	4.9 µg/24 in^2	<0.1 µg/24 in^2	2.2 µg/24 in^2
Skin/Rameriz	20 µg/24 in^2	4.7 µg/24 in^2	<0.1 µg/24 in^2	11 µg/24 in^2

ATTACHMENTS

A summary of the air sampling results is included in Table 1. The data are presented by sample location.

Appendix A, Air Sample Data Sheets, is attached and includes data pertaining to the sample collection. Data include location of sample, total sampling time, sample flow rate, and sample volume. Pump calibration information can also be found in this attachment. Skin wipe sample data are also presented in this attachment.

Appendix B, Laboratory Results, includes the laboratory data from NATLSCO.

OCCU-TEC appreciates the opportunity to assist you on this project. Please contact us if we can be of further assistance. We look forward to future opportunities to assist Federal Prison Industries and USP Atwater.

Sincerely,

Carl Sharp
Senior Project Manager
OCCU-TEC, Inc.
Attachments

Cc: Leroy Smith

Attachment 4526

OCCU-TEC Incorporated

6501 E. Commerce, Suite 230
Kansas City, MO 64120
(816) 231-5580 (800) 950-1953

AIR SAMPLE DATA SHEET

STUDY NO.:	ATW-7	TYPE:	o P x A o B	DATE:	01/21/2003

CONDUCTED BY:	Carl Sharp	COMPANY:	USP-Atwater
OPERATION:	CRT Breaking Operation	DEPARTMENT:	UNICOR
EMPLOYEE'S NAME:	Exhaust outlet	SPECIFIC AREA:	Exhaust outlet
EMPLOYEE ID #:	N/A	SUPERVISOR:	N/A
PROTECTION:	N/A		

DRY BULB TEMP:	72 ° F	Wet Bulb Temp:	60 ° F	REL. HUMIDITY:	50 %	TIME:	14:15 HRS

PUMP TYPE:	BDX II			PUMP NO.:	375		
PRE-TEST CAL:	1.94 LPM	POST-TEST CAL.:	1.94 LPM	FLOW RATE:	1.94 LPM		
START:	9:00 HRS	STOP:	14:10 HRS	TOTAL:	310 MIN	VOLUME:	601.4 L

SAMPLING MEDIA:	0.8 micron cellulose ester membrane
ANALYSIS:	Barium, Beryllium, Cadmium & Lead
RESULTS:	0.0038 mg/m3, <0.000083 mg/m3, 0.0088 mg/m3, 0.021 mg/m3
PEL:	0.5 mg/m3, 0.002 mg/m3, 0.005 mg/m3 & 0.05 mg/m3
TLV:	0.5 mg/m3, 0.002 mg/m3, 0.01 mg/m3 & 0.05 mg/m3

DESCRIPTION: Sample is placed approximately 2 feet from the exhaust outlet, in the air stream, during the normal work operations. The area outside the hood is kept clean of debris using a HEPA filtered shop vac.

PRIME CONTACT AND TELEPHONE NUMBER: Leroy Smith (209) 386-4810

LEGEND:

PPM = PARTS PER MILLION
TWA = TIME WEIGHTED AVERAGE
MG/M3 = MILLIGRAMS PER CUBIC METER
A = AREA SAMPLE
P = PERSONAL SAMPLE
B = BULK SAMPLE
PEL = PERMISSIBLE EXPOSURE LIMIT
TLV = THRESHOLD LIMIT VALUE
N/A = NOT APPLICABLE

attachment # 32

inmate workers were exposed during the continued operation of **EIGHT** days that weren't wearing a personal air sample to test their exposure level.

The statement that the booth's filter bank was inspected and staff alerted Mr. Sthaley, Associate Warden of Industries of the presence of silvery dust exiting the exhaust from the booth is true, because I even notified Mr. Stahley. Mr. Bernthold notified Mr. Stahley prior to the air sampling being conduct that the filters were missing. These filters weren't replaced tell **EIGHT** days had come and gone. Mr. Stahley was knowingly aware of the hazardous metal exiting the exhaust system from the booth and knowingly and wilfully continued to allow staff and inmate workers be exposed to harmful metals, which is **CRIMINAL INTENT.**

On January 23, 2003, Mr. Donald Moor, Recycling Supervisor approached me at UNICOR mainline and asked if I was aware of the dust coming out of the glass breaking booth. He then mentioned, that Ms. Watson, Recycling Supervisor and several inmates are covered with silver like dust all over their bodies. He also mentioned, that he informed Mr. Stahley that Ms. Watson was covered with dust from the glass breaking operations. He told me, that Mr. Stahley informed him there were nothing to worry about. I went to Mr. Stahley, and informed him of the possible accidental release of lead, cadmium, and other harmful metals into the air from the glass breaking booths exhaust system **(See Attachments 33 & 33a)**

On January 23, 2003, I formally notified Mr. Stahley in writing of the hazardous metals exiting the booths exhaust and temporally suspended the glass breaking operation. The glass breaking booth was only authorized to re-open for the personal air sampling and wipe samples to be conducted on January 21, 2003 **ONLY**. This information also went the Mr. Luna, Acting Warden. **(See Attachment 34)**

On January 28, 2003, Mr. Berthold mentioned to me that the glass breaking operation never shut down and Mr. Stahley and himself was aware of the dust coming out of the booths exhaust. Mr. Stahley and Mr. Luna stated, you (Safety Manager) will not shut anything down in the UNICOR Factory without informing use. Mr. Luna mentioned, that Warden Schultz called and asked if you (Safety Manager) were taking pictures of the glass breaking operation and Warden Schultz mentioned that you should be in Annual Refresher Training and not down in UNICOR taking pictures. Mr. Luna then stated, you have been told you can't just take pictures of the UNICOR Factory or any other place in the institution. I took pictures of poor housekeeping, dirty respirators, dirty PPE, cups, beverage containers, clothing being exposed to the dust exiting out the exhaust. **(See Attachments 35, 35a, 35b, 35c, & 35d)**

NOTE: These are pictures that were taken of the hazardous metals that continued to exit out the glass breaking booths exhaust, until the filters which were missing were properly installed.

January 23, 2003

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: Leroy A. Smith Jr.

SUBJECT: Conversation with Mr. Moore

On January 23, 2003 at approximately 11:15 am., Mr. Moore, Unicor Foreman approached me at Unicor Mainline. Mr. Moore asked me, if I was aware of the dust coming out of the glass breaking booth?

I replied, that no one had mention anything to me about dust existing the glass breaking booth.

Mr. Moore then stated, "that Ms. Watson, Unicor Foreman and several inmates on production line #I were covered with silver like dust all over there bodies".

I then asked Mr. Moore, when did Ms. Watson notice the dust exiting the glass breaking booth?

Mr. Moore replied, that Ms. Watson informed him that she was covered with dust on Tuesday during the air sampling, Wednesday, and today.

I then asked Mr. Moore, why did you wait until today to tell me of this? I informed Mr. Moore, that Ms. Watson and the inmate workers could of been exposed to lead, cadmium or any other harmful metals.

Mr. Moore replied, that he didn't see me until today. Mr. Moore stated, "I understand that staff and inmates could of been exposed and that's why I am coming to inform you of this." Mr. Moore then stated, "I have told you of the black staff that I cough up and blow out my nose every day when I am at home at night.

I replied, that I am looking up the regulatory guidelines for the airborne particulate's in the work area and that I will be addressing the excess dust in the factory. I also mentioned to Mr. Moore, that air sampling in the factory for lead, cadmium, and other harmful metals have been negative, but the dust level is very high in the factory which needs to be addressed. I then asked Mr. Moore, if he had informed Mr. Stahley, AW (I&E) of the incident.

Mr. Moore stated, "I informed Mr. Stahley that Ms. Watson was covered with dust from the glass breaking booth."

I then asked Mr. Moore, what did Mr. Stahley tell you?

Attachment #55

Mr. Moore replied, that Mr, Stahley informed him that there was nothing to worry about.

I then mentioned to Mr. Moore, that there should be some concern and that I would be speaking to Mr. Stahley about.

I then went to Mr. Stahley, and informed him of the possible accidental release of lead, cadmium and other harmful metals into the air from the glass breaking booths exhaust system.

attachment #53a

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

January 23, 2003

MEMORANDUM FOR THOMAS W. STAHLEY, ASSOCIATE WARDEN (I&E)

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Dust Release (i.e., Lead, Cadmium, Barium, etc.)**

This memorandum is to reiterate our previous discussion and deep concerns expressed by UNICOR staff about the dust being released from the glass breaking booths exhaust system into the factory. The Safety Office essentially identified two major issues. First, the glass breaking operation has released hazardous metals into the air. Second, staff and inmates were possibly exposed to higher levels of lead, cadmium, barium and other dangerous metals then allowed for by Occupational Safety and Health Act (OSHA). As a precautionary measure staff and inmates should be notified and offered the opportunity to receive baseline blood and urine tests to determine if any their exposure.

Also, as a precautionary measure the glass breaking area shall be temporally suspended until corrective action and additional testing can be conducted, which will ensure the safety and health of staff and inmates.

If there are any questions, please do not hesitate to let me know.

cc: Warden

January 28, 2003

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **Leroy A. Smith Jr.**

SUBJECT: **Conversation with Mr. Bernthold, Mr. Luna, and Mr. Stahley**

On January 28, 2003 at approximately 9:15 a.m., during breaking in Annual Refresher Training (ART) Mr. Bernthold approached me in the hallway outside the visiting room and across from the AW's office. Mr. Bernthold mentioned, that inmates were continuing to break glass. Mr. Bernthold then asked, if I had heard anything from Occu-Tec on the air sampling results.

I mentioned to Mr. Bernthold, that the glass breaking operation should have been temporarily suspended. I then asked Mr. Bernthold, who authorized the glass breaking operation to remain open?

Mr. Bernthold replied, who do you think, Mr. Stahley.

I informed Mr. Bernthold, that I personally told Mr. Stahley that the glass breaking operation needs to be temporarily suspended until proper control measures could be implemented to prevent any exposure to staff or inmates in the factory. I then asked Mr. Bernthold, didn't Mr. Stahley tell you last Thursday to close the glass breaking operation down.

Mr. Bernthold replied, No.

Mr. Bernthold then stated, "Mr. Stahley and I both were aware of the dust coming out the back of the booth and I have let Mr. Stahley know that I need time to correct the problem, but I have not been provided the time." Mr. Bernthold also stated, "I will fix the problem tonight."

I then asked Mr. Bernthold, are you telling me that the glass breaking operation has been operating over the last five working days?

Mr. Bernthold replied, Yes, the glass breaking operation never closed, because Mr. Stahley informed him that I (Mr. Smith) said it was okay to continue operating until the test results come in. I informed Mr. Bernthold, to call Mr. Stahley and inform him that the glass breaking operation needs to be temporarily suspended and that I will notify Mr. Luna, Acting Warden.

I called Mr. Luna in the Warden's office to inform him, but Ms. Bernhardt, Acting Warden's Secretary informed me that Mr. Luna was out of the office. I asked Ms. Bernhardt, to tell

Mr. Luna that I have temporarily suspended the glass breaking operation do to accidental release of dust (i.e., lead, cadmium, or barium etc.) from the booths exhaust system into the factory.

I then called Mr. Bernthold and asked him, if he had spoken with Mr. Stahley yet?

Mr. Bernthold replied, Yes. Mr. Bernthold also mentioned, that Mr. Stahley told him not to close the glass operation until he had talked with Mr. Luna.

I then asked Mr. Bernthold, did you tell Mr. Stahley that I have requested the glass breaking operation to be temporarily suspended because of dust exiting the booth, which staff and inmates maybe being exposed to lead, cadmium, and barium, etc?

Mr. Bernthold replied, Yes.

I then tried to get a hold of Mr. Stahley by phone and radio, but no response.

At approximately 12:45, Mr. Luna called the visiting room to speak to me. Mr. Luna asked, "Why are you shutting down the glass breaking operation with out notifying me (Mr. Luna) first and getting my approval?"

I informed Mr. Luna, that the glass breaking operation wasn't even suppose to be open in the first place and second, dust is exiting the booths exhaust system, which lead, cadmium, barium, and any other hazardous metals are being released into the factory. I also informed Mr. Luna, that the dust has been released into the factory for over five working days and Mr. Stahley and Mr. Bernthold both have known about this. I then mentioned to Mr. Luna, that based on the harmful metals being released into the air, which can cause a serious health concern for staff and inmates, I deemed it a immediate danger and immediately order Mr. Bernthold to temporarily suspend the glass breaking operation.

Mr. Luna then asked, "have you personally talked to Mr. Stahley about this?"

I replied, No. I also mentioned, that I took action first and deemed it necessary to notify Mr. Stahley after the glass breaking operation was temporarily suspended, which I followed proper protocol according Program Statement 1600.08.

Mr. Luna then stated, "It is Mr. Stahley's factory and he should of been notified first."

I mentioned to Mr. Luna, that Mr. Bernthold had informed Mr. Stahley and the factory continues to run. I also mentioned to Mr. Luna, that Mr. Stahley was notified last week by his staff and myself that the dust was exiting out the booths exhaust system and he (Mr. Stahley) continues to allow the glass breaking

do mine. I also informed Mr. Luna, that I have followed proper protocol per Bureau Policy and that I felt Warden Schultz needs to see how this operation works when he is not around.

Mr. Luna then informed me, "Warden Schultz was not happy with you taking the pictures." Mr. Luna then hung up the phone.

At approximately 3:30 p.m., Mr. Luna called the visiting room to speak with me. Mr. Luna informed me, "That he wanted to see me in his office."

When I arrived Mr. Stahley was already there. Both Mr. Stahley and Mr. Luna asked me, to set down.

Mr. Stahley began by stating, "I have no knowledge nor has anyone informed me that dust was exiting the booths exhaust system and that I want to make that very clear to both of you."

I mentioned to Mr. Luna, Acting Warden, that UNICOR staff and I notified Mr. Stahley last week when the accidental release first occurred.

Mr. Stahley asked, "What UNICOR staff told you this? Was it Ms. Watson or Mr. Moore?"

I informed Mr. Stahley, that I could not divulge the staff names under the Right to Know Act, which is strictly confidential, which protects the worker from harassment or retaliation.

Mr. Stahley again asked, "Who Mr. Allison or Mr. Garcia?"

I then informed Mr. Stahley, that I informed him personally and in writing on the 23rd of this month. I again informed Mr. Stahley, that I will not provide him with staff names, but I will speak to Warden Schultz when he returns about it.

Mr. Stahley then stated, "You can speak to the Warden all you want, but this is the first I have heard about the dust being released into the air." Mr. Stahley also stated, "I will expect you to inform me (Mr. Stahley) first, when the next time there is a problem with UNICOR operations before you (Mr. Smith) just shut down the factory!"

Mr. Luna then stated, "I agree with Stahley and I have told you this in the past!"

I informed Mr. Stahley and Mr. Luna, that I followed proper protocol by Law and Bureau Policy. I then informed Mr. Luna, that I always bring safety concerns to both of you (Mr. Stahley and Mr. Luna) first and ninety-eight percent (98%) of the time they never get addressed or corrected until I am forced to inform the Warden. I finally mentioned, to Mr. Stahley and Mr. Luna, that an accidental release of lead, cadmium, or barium etc. is serious and we should not turn our backs as if nothing happened, because once we have crossed that line it becomes criminal intent and I don't want any part of that.

operation to remain operating, as if the dust (i.e., Lead, Cadmium, Barium, etc.) would not be harmful to staff and inmates and that's why I requested to have the glass breaking operation temporarily suspended, which prevents continued exposure to staff and inmates, protects the Warden, and the Agency.

Mr. Luna then stated, "I want you to call Mr. Stahley and inform him of everything."

I then called Mr. Stahley on the phone, Mr. Stahley answered asking, "is this Luna?"

I replied, No, it's Smith.

Mr. Stahley then replied, "I don't want to talk to you about anything! I want to talk to Luna!"

I informed Mr. Stahley, that Mr. Luna wanted me to call him and inform him of the current status of the glass breaking operation.

Mr. Stahley replied, "I don't want to talk to you now nor in the future about anything!"

I informed Mr. Stahley, that I understand his frustration, but the health of staff and inmates over ride production and profit.

Mr. Stahley then slammed the phone down.

I then called Mr. Luna back over the phone and informed him that Mr. Stahley did not want to talk me now or in the future about anything and slammed the phone down.

Mr. Luna replied, "Well, that's Stahley."

At approximately 2:45 p.m., Mr. Luna called the visiting room to talk to me. Mr. Luna stated, "Warden Schultz called me and asked if you were taking picture of the glass breaking operation." Mr. Luna also stated, "Warden Schultz mentioned that you should be Annual Refresher Training (ART) and not down in UNICOR taking pictures." Mr. Luna then asked, "Have you been taking picture of the glass breaking operation."

I replied, "Yes". I also informed Mr. Luna, that I was conducting a follow up to ensure the glass breaking operation has been temporarily suspended, which it hasn't and I took pictures at the same time to show Warden Schultz and himself the type of operation Mr. Stahley continues to run.

Mr. Luna then stated, "I have told you before Smith, that you can't just take pictures of UNICOR or any other place in the institution without clearing it through me first!"

I informed Mr. Luna, that pictures are taken by other departments everyday in the institution without receiving clearance because it's part of their daily job, which it's also necessary for me to

Mr. Stahley then asked, "What are you telling us? Are you implying that Luna and I wouldn't do the right thing and protect staff and inmates?"

Mr. Luna the stated, "Your walking a fine line Smith!"

I then replied, you both (Mr. Stahley and Mr. Luna) don't get it and you probably never will. I then asked Mr. Stahley and Mr. Luna, is the glass breaking operation temporarily suspended as we speak?

Mr. Stahley replied, "No." "There just shutting down for the day."

I then mentioned to Mr. Luna, that's exactly what I am talking about. I then informed Mr. Stahley, that I called Ms. Rijos at approximately 2:05 today and instructed her to temporarily suspend the glass breaking operation and it's still open, which I informed Mr. Luna that I was going to call her. I finally mentioned to Mr. Stahley, that should answer your last question, right.

Mr. Luna again stated, "Your walking a fine line Smith and that I can't believe you would put me in this position." Mr. Luna also stated, "I don't want you to be talking to anyone about this."

I informed Mr. Luna, I will provide staff and inmates what they need to know, nothing more, nothing less, but what I will not do is provide them a false sense of protection or lie to them. I also mentioned, that the success of a safety program is being able to sell the program to staff and inmates and gain their trust.

Mr. Luna then mentioned, "I don't have anything else to say, do you Stahley."

Mr. Stahley replied, "No."

Mr. Luna then stated, "You may go."

Photo #1

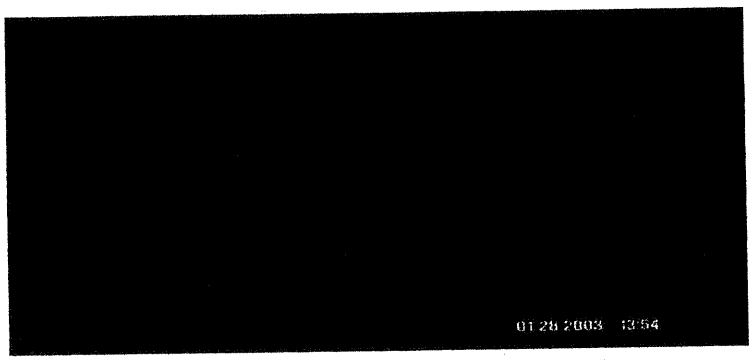


Photo #2

Photo #3

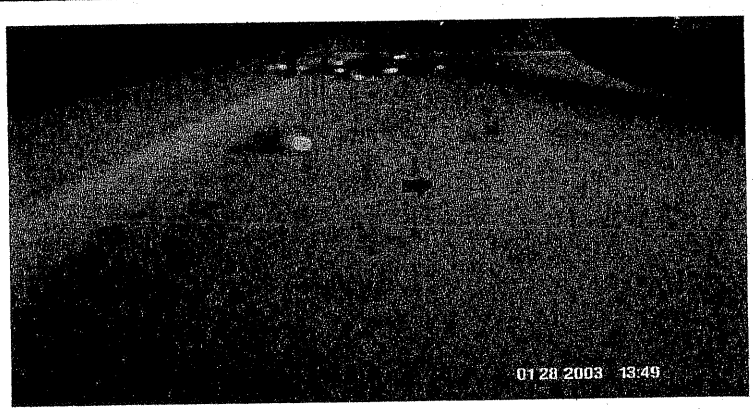


Photo #4

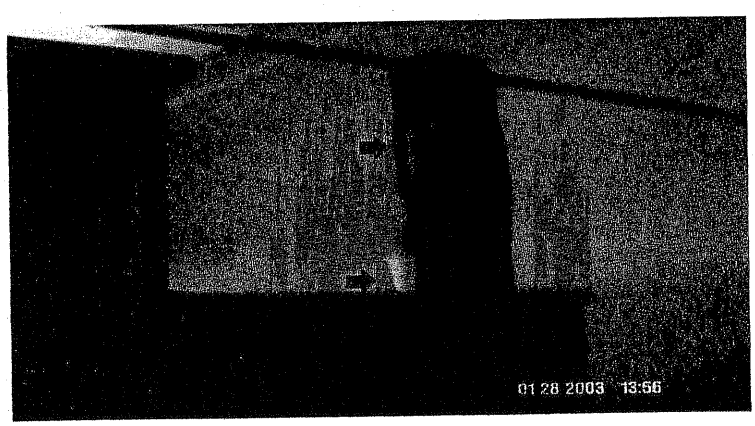


Photo #5

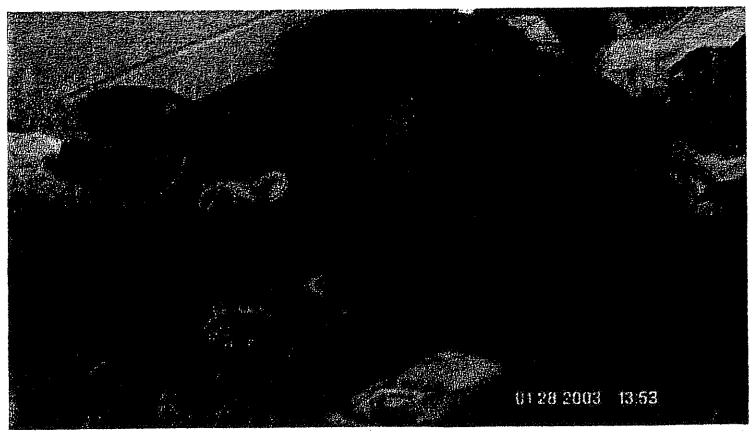
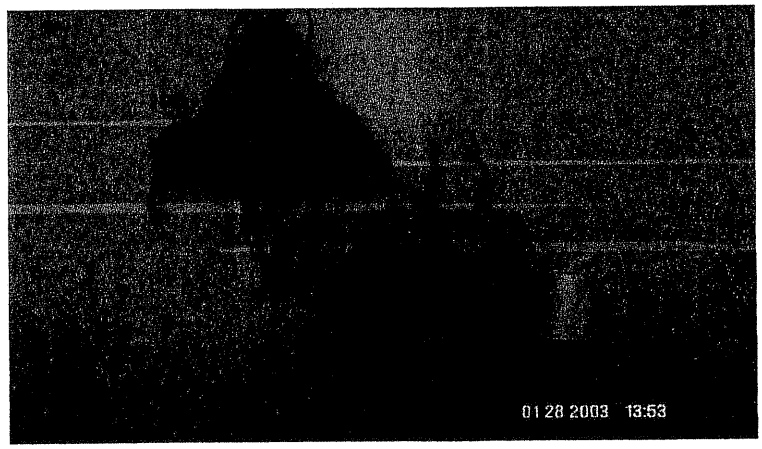


Photo #6



On January 29, 2003, Mr. Stahley informed Mr. Luna, Acting Warden, Mr. Bill Bernthold, Recycling Supervisor, and I that he wasn't aware of the dust being released into the area. I mentioned that Mr. Bernthold was aware of the dust exiting the exhaust system. Mr. Stahley then mentioned, is that true Bill, you were aware of this and you didn't tell me. Mr. Bernthold replied, I informed you about this on three different occasions Mr. Stahley and I asked you to allow me time to fix the problem, but we were to busy you said. **(See Attachments 36, 36a, & 36b)**

NOTE: Mr. Stahley, Mr. Luna, and Mr. Schultz allowed the glass breaking operation to remain operating **EIGHT** days after they were informed by me that the glass breaking operation was **Temporally Suspended**.

On January 29, 2003, I then informed Warden Schultz of the intimidation, harassment, and coercion Ms. Watson received from Mr. Stahley. Warden Schultz replied, you need to relax and that I will speak with Mr. Stahley and Mr. Luna. Warden Schultz then mentioned you need to relax and not worry so much and have you eaten dinner yet. I replied, No. Warden Schultz then mentioned I think you should eat a good meal, have a donut for dessert, and get a good nights sleep and everything will be better tomorrow. **(See Attachment 37)**

January 29, 2003

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Mr. Stahley, Mr. Luna, Mr. Bernthold, and Ms. Watson**

On January 29, 2003 at approximately 1:07 p.m., Mr. Luna, Acting Warden called the visiting room to speak with me and requested to see me in the Warden's office immediately. When I arrived the Warden's office Mr. Stahley and Mr. Bernthold was waiting outside in the corridor.

Mr. Stahley approached me and asked, why has Ms. Watson been calling you?

I informed Mr. Stahley, that Ms. Watson hasn't been calling me, but I have been trying to get a hold her about the accidental release she may have been exposed to.

Mr. Stahley then stated, "Mr. Luna told me that you informed him that Ms. Watson has been trying to get you on the phone all day long."

I then informed Mr. Stahley, that Mr. Luna is mistaken.

Mr. Stahley, Mr. Bernthold, and I then entered the Warden's office, Mr. Stahley immediately mentioned to Mr. Luna, that Smith claims he didn't tell you (Mr. Luna) that Ms. Watson was calling him, but he (Mr. Smith) was calling Ms. Watson to speak to her.

Mr. Stahley then mentioned, I want to make it clear that I (Mr. Stahley) was not aware of the dust being released into the air.

I informed Mr. Luna, that UNICOR staff mentioned to me personally that they did notify Mr. Stahley and I personally informed Mr. Stahley last Thursday in person and in writing.

Mr. Stahley then asked, What are you telling me Smith?

I then informed Mr. Luna, that the person I spoke to last Thursday about the dust being released into the factory looked exactly like Mr. Stahley, but I could be wrong.

Mr. Stahley again informed Mr. Luna, that he was not aware of the dust being released. Mr. Stahley again asked me, what are you still trying to tell me?

I mentioned to Mr. Luna, that Mr. Stahley has a tendency of forgetting things for convenience, because Mr. Bernthold was aware of the dust exiting the glass breaking exhaust system and tried to make time to fix the problem.

Mr. Stahley then stated, "Is that true Bill, you were aware of this and you didn't tell me."

Mr. Bernthold then replied, I informed you about this on three different occasions Mr. Stahley and I asked you to allow me time to fix the problem, but we were to busy you said.

Mr. Stahley and Mr. Luna then ended the meeting.

At approximately 3:15 p.m., I went to speak with Ms. Watson and asked her if she was still going to provide me a memo on the glass breaking incident.

Ms. Watson informed me, that she did not want to provide me with a memo on the incident and that she was called into Mr. Stahley's office about issues pertaining to staff in the factory and about the glass breaking operation for over an hour.

I informed Ms. Watson, that I haven't mentioned to anyone about us speaking to each other.

Ms. Watson then mentioned, you called me, I didn't call you and it has been implied that you stated I went to you about the glass breaking operation and I haven't, I only spoke with Moore.

I asked Ms. Watson, who made this false allegation? I then mentioned to Ms. Watson, that I did call her (Ms. Watson) because I was concerned and I wanted to make sure she was okay, it's part of my job when a safety or health concern has been brought to my attention.

Ms. Watson then stated, "I know, but right now isn't a good time to talk about anything because there are other things going on too."

I then asked Ms. Watson, have you been told not to talk to me?

Ms. Watson replied, that I don't think it's a good idea for me (Ms. Watson) to be seen talking to you (Mr. Smith) right now.

I then mentioned to Ms. Watson, that I was not trying to push her into writing the memo if she feels uncomfortable in doing so, but if she doesn't report the incident, then it never happened. I also asked Ms. Watson, if she would like to file a CA-2A through OWCP for possible exposure, which you have the right to do so if you feel you have been exposed?

Ms. Watson then stated, "I will talk to you about it later."

At approximately 4:00 p.m., I informed Mr. Luna, that Mr. Stahley crossed the line.

Mr. Luna then asked, what happen now?

I informed Mr. Luna, that Mr. Stahley has implied to Ms. Watson that I informed him that she called me to report her exposure to the hazardous metal dust being exhausted out of the glass breaking booth, which I haven't and I made that clear to both of you this morning. I also mentioned to Mr. Luna, that Ms. Watson has the right to report a unsafe or unhealthy working environment without being retaliated against.

Mr. Luna then asked, did you speak to Mr. Stahley?

I replied, No. I then mentioned to Mr. Luna, if this is true Mr. Stahley's actions towards Ms. Watson are clearly defined as intimidation, retaliation, and harassment, which is breaking the law. I also mentioned to Mr. Luna, that Ms. Watson will never trust me or anyone again.

Mr. Luna then mentioned, that maybe we need to have another meeting.

I then mentioned to Mr. Luna, that the meeting with Mr. Stahley wouldn't do us any good, the damage has already been done and he will deny or forget the conversation ever took place and you told me that yourself on several occasions.

Mr. Luna again mentioned, that we should have another meeting and work things out.

I informed Mr. Luna, that I have taken this harassment and retaliation from Mr. Stahley, Ms. Gant, and himself for over two years and that I am not going to stand by and watch someone else be treated this way and that I am going outside the institution with this. I also informed to Mr. Luna, that no one should be intimidated or fear reprisal for reporting a safety or health concern and that you can tell that to Mr. Stahley. I finally mentioned to Mr. Luna, that both of you (Mr. Stahley and Himself) have worked so hard to shut me up, discredit me personally and professionally, that both of you have created this turmoil and hostile work environment because you both just don't care.

Mr. Luna stood there, saying nothing, as if he was in shock.

I mentioned to Mr. Luna, that I will be speaking with Warden Schultz on the conversation that took place with Mr. Stahley, Mr. Bernthold, Ms. Watson, and himself.

January 29, 2003

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **Leroy A. Smith Jr.**

SUBJECT: **Conversation with Warden Schultz**

On January 29, 2003 at approximately 5:30 p.m., I called Warden Schultz and informed him of the hazardous metals exiting the booths exhaust system into the factory for five working days.

I also informed Warden Schultz, that Mr. Stahley was informed of the potential exposure to hazardous metals by UNICOR staff myself last week. I then informed Warden Schultz, that Mr. Luna and Mr. Stahley were both working together to set me up for code of conduct issues, which I have done nothing to deserve this treatment. I then mentioned to Warden Schultz, that Mr. Stahley has implied to Ms. Watson that I informed him that she called me about her exposure to the hazardous metal dust being exhausted out of the glass breaking booth area into the factory, which is clearly a intimidation tactic, which breaks down trust and confidentiality between Ms. Watson and I. I also mentioned to Warden Schultz, that Mr. Stahley is clrealy breaking the law by retaliating and harassing Ms. Watson for reporting what she believes to be a unsafe or unhealthy working environment.

Warden Schultz then stated, "You need to relax and that I will speak with Mr. Stahley and Mr. Luna." Warden Schultz also stated, "You shouldn't worry about losing Ms. Watson's trust or any other staff's trust because they know who has supported them and they know they can trust you to help them in the future."

I then mentioned to Warden Schultz, that I wanted him to hear it from me first, that I informed Mr. Luna that I am finally going outside the institution to address the hostile work environment created by both Mr. Stahley and Mr. Luna towards other staff and myself, which we have been subjected to. I then informed Warden Schultz, that their unprofessional conduct needs to come to a end.

Warden Schultz then stated, "You need to relax and don't worry so much." Warden Schultz then asked, "Have you eaten dinner yet?"

I replied, No, why do you ask.

Warden Schultz then replied, "I think you should eat a good meal, have a donut for dessert, and get a good nights sleep and everything will be better tomorrow."

Paragraph 10 - Page 9:

The Chemical Safety Information from Intergovernmental Organization stated - The naturally occurring levels of Barium in the environment are very low. They also state, 1. People with the greatest risk to Barium exposure with additional health affects are those that work the Barium industry. 2. Small amounts of Barium may cause a person to experience breathing difficulties, increased blood pressures, heart rhythm changes, stomach irritation, muscle weakness, change in nerve reflexes, swelling of the brain and liver, kidney and heart damage.

On August 3, 2004, Mr. Lee, Assistant National Safety Administrator, also an Industrial Hygienist stated, a mere presence of toxic substance, such as heavy metals, does not trigger requirements for blood sampling and notification. Mr. Lee also stated, if you have concerns about safe worker exposure levels to heavy metals, you should make a determination based on personal air sample collected from the inmates who handle CRT's. **(See Attachment 38)**

NOTE: According to the Agencies investigation report date June 13, 2005, Allegations #1, Paragraph #1 and Findings, Paragraph 9 & 10 state, 1. The OSHA Action Level at or above the 30 ug/m3 Lead and .0025 ug/m3 Cadmium calculated over an eight hour time weighted average triggers a mandatory Medical Surveillance Program according to 29 CFR 1910.1025 (j)(1) Lead and 29 CFR 1910.1027(1)(1)(I) Cadmium. 2. Results from one inmate's sample in January 2003, showed evidence of exposure to cadmium above the OSHA's Action Level. This particular inmate worked outside the booth directly across from the booth's exhaust location. 3. Finally, the inmate's personal air sample reading of .0033 mg.m3 exceeds the OSHA's AL of .0025 mg.m3 for cadmium.

NOTE: This inmate was outside the glass breaking booth with no respirator working on Production Line #1 with about thirty other inmates in the same area and at least one to two staff supervising the Production Line and the Glass Breaking Booth without respirators, which were exposed from January 21 - 30, 2003 .

NOTE: This doesn't account for other UNICOR staff and inmates walking through the area nor staff that walk through this area from other departments to stand mainline, which were exposed from January 21 - 30, 2003.

Federal Prison Industries was in noncompliance from January 21 - 30, 2003 for the following - **1.** OSHA 29 CFR 1910.1027(1)(1)(I) Cadmium - inmate's personal air sample reading of .0033 mgm3 exceeds the Action Level of .0025 mg.m3, which this inmate nor anyone else were informed or placed into a Medical Surveillance Program. **2.** OSHA 1910.1025(d)(8) - Employee notification - 1910.1025(d)(8)(I) States - within 5 working days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent that employee exposure. **3.** OSHA 1910.1027(d)(5)(I) - Employee notification of monitoring results - within 15 working days after the receipt of the results of **any monitoring performed** under this section, the employer shall notify each affected employee individually in writing of the results. 4. In addition, within the same time period the employer **SHALL POST** the results of the exposure monitoring in an appropriate location that is accessible to all affected

U.S. Department of Justice

Federal Bureau of Prisons

Washington, D.C. 20534

August 3, 2004

MEMORANDUM FOR L. A. SMITH, SAFETY MANAGER, USP ATWATER

FROM: //s//
John L. Lee, National Safety Coordinator

SUBJECT: USP Atwater CRT Disassembly

After reviewing your memorandum to Janice Aragon, dated August 2, 2004, I have the following comments.

I agree with your assertions; debris from broken CRTs should be cleaned-up using a wetting agent and HEPA vacuum; the debris should be handled and stored properly and inmates should be trained in cleaning and storage techniques. However, I am concerned with the assumptions you made about inmate exposures to heavy metals and blood testing and notification requirements.

The mere presence of toxic substance, such as heavy metals, does not trigger requirements for blood sampling and notification. If you have concerns about safe worker exposure levels to heavy metals, you should make a determination based on personal air samples collected from inmates who handle CRTs. Sampling results that are at or above the action levels for cadmium and lead and above the permissible exposure levels for barium and beryllium will indicate the need for additional actions to protect workers.

cc: Steve Tussey
Larry Novicky
Dave Clements

employees, which this has never happen for any staff or inmate worker at USP Atwater, FCI Elkton, FCI Texarkana, FCI LaTuna, FCI Marianna, USP Lewisburgh.

The glass breaking inmate workers which are provided proper personal protective clothing, equipment, respirators, and are in a negative pressure booth are still being exposed to low concentrations of harmful dusts over an accumulative period of time have shown an increase of Lead and Barium in their blood levels.

a. The blood samples of three inmates who work in the glass breaking operation for Lead in 2002 and 2003 - 1. <2 to 5, 2. <2 to 2, and 3. <2 to 4 and for Barium in 2002 and 2003 - 1. 60 to 110, 2. 83 to 150, and 3. 59 to 120.

Paragraph 11 - Page 9:

The personal air sample results taken between January 2004 through September 2004, and during the OSHA inspection were taken in the UNICOR factory with one small problem, the three production lines were not disassembly Cathode Ray Tubes (CRT's) at the time the air and personal air sampling was being conducted. Only two production lines were up running and disassembling cable boxes. I would clearly say that Federal Prison Industries have not conduct any exposure or health assessments to ensure the safety and health of our staff and inmate workers.

Paragraph 12 - Page 9 & 10:

The Safety staff throughout the Bureau of Prisons are not trained nor qualified to make decisions towards proper measurements and design of ventilation systems. The only thing Safety staff have had some formal training on is the velomiter monitor to take air flow readings to determine the CFM's being provided to each inmate cell, staff offices, facilities shop area etc. This can be verified in any Safety staff's training records. The Industrial Ventilation manual published by the American Conference of Governmental Industrial Hygienists maybe required to review, but this manual is not part of our mandatory library or even recommended library for all Safety Programs. **(See Attachment 39 & 39a)**

Knowing this was out my range of expertise, I requested on November 28, 2001, January 31, 2002, and May 9, 2002, that Federal Prison Industries conduct an Environmental Health Risk Assessment. The ventilation system to this booth would of been part of the risk assessment. Mr. Steven Schwalb and Mr. Novicky continued to deny any safe, health, or ventilation concerns and they would fund this project to come into compliance with OSHA regulations not EPA standards. **(See Attachments 1, 2, & 3)**

On May 29, 2003, UNICOR was provided a proposal from Science Applications International Corporation (SAIC) to conduct a six step task to minimize worker environmental exposure to hazardous compounds associated with the CRT's, which UNICOR signed a contract agreement to have the work down, then SAIC rescinds the referenced proposal in it's entirety, per Mr. Stahley's and Mr. Novicky's request. **(See Attachments 40, 40a, 40b, & 40c)**

ATTACHMENT K

MANDATORY SAFETY DEPARTMENT LIBRARY, TEST EQUIPMENT, AND COMPUTER-RELATED ITEMS

SAFETY DEPARTMENT LIBRARY

Note: Safety Managers are free to supplement their libraries with any other reference materials they may deem necessary to perform their respective job functions, in addition to those noted in this manual.

Additionally, the Program Statements and references listed below are subject to updating at any time. Therefore, it is the responsibility of each Safety Manager to ensure that they have access to the most current editions.

1. Program Statement Occupational Safety and Environmental Health Manual

2. Program Statement Management Control and Program Review Manual

3. Program Statement Food Service Manual

4. Program Statement Facilities Operations Manual

5. Program Statement Health Services Manual

6. Program Statement SENTRY General Purpose Manual

7. Environmental Regulations TRM

8. National Fire Codes from the National Fire Protection Association (NFPA - subscription service is preferred) and Life Safety Code Handbook, most current edition, from NFPA

9. National Electrical Code, most current edition, from NFPA

10. Copies of OSHA CFR 1910, General Industry, and CFR 1926, Construction Standards or OSHA Fast Regs. This information is also attainable through the Internet.

11. Copies of EPA 40 CFR Subchapters A-R or CD-ROM software containing the required subchapters. This information is also attainable through the Internet.

12. Copies of Department of Transportation 49 CFR Parts 106-399 or CD-ROM software containing the required parts. This information is also attainable through the Internet.

13. Accessibility to applicable American Correctional Association (ACA) Standards

14. Food Code Manual, 1993 or current Edition, from the Public Health Service

15. Truman's Scientific Guide to Pest Control Operations, current edition, by Edgell Communications

16. Handbook of Pest Control, by Arnold Mallis, current edition

17. Accident Prevention Manual for Industrial Operations, Engineering, and Technology, current edition, by the National Safety Council (NSC)

18. Accident Prevention Manual for Industrial Operations, Administration and Programs, current edition, by NSC

19. NFPA Inspection Manual, current edition, by NFPA

Note: In addition to these manuals and references, it is **recommended** that the following magazine subscriptions be procured to enhance the Safety Department's reference base.

- Professional Safety (ASSE)
- Pest Control
- Pest Control Technology
- Consumer Reports
- Safety and Health (NSC)
- Family Safety & Health (NSC)
- Occupational Safety & Health Week Safety Smarts
- Fire Journal (NFPA)
- Fire Command (NFPA)
- Industrial Hygiene News
- Environmental Contractor
- Occupational Safety & Health
- Occupational Hazards
- Environmental Protection
- Institution Sanitation by Walton

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

June 30, 2003

MEMORANDUM FOR THOMAS W. STAHLEY, ASSOCIATE WARDEN (I&E)

FROM: **L. R. Smith, Safety Manager**

SUBJECT: **SAIC Proposal**

I provided UNICOR a proposal from Science Applications International Corporation (SAIC) on May 29, 2003. The proposal addressed a six step task to minimize worker and environmental exposure to hazardous compounds and wastes associated with the Cathode Ray Tubes (CRT's). SAIC has extensive experience specifying and sizing control technologies to meet federal and state air quality standards. The implementation of these initiatives is paramount to the continued success and regulatory compliance, which will allow the UNICOR Computer Recycling Program to safely resume normal operations. As we know, non-compliance with OSHA and EPA standards could result in citations and fines, expose the Bureau to future litigations and Labor Management Relations (LMR) issues.

If the SAIC proposal is not acceptable in achieving regulatory compliance and UNICOR has another corporation in mind, please advise. The Safety Department will continue to provide technical assistants and advise to UNICOR in the selection and evaluation of the CRT activities.

I greatly appreciate your consideration and thorough review of the SAIC proposal, which is an important element to ensure the UNICOR CRT Recycling Program meets all regulatory guidelines. This will also certify the CRT glass breaking program by an outside independent source.

If I can provide any further assistance, please do not hesitate to let me know.

cc: AW(C) Factory Manager Larry Novicky UNION
Safety File

From: Tom Stahley
To: Smith, Leroy
Date: 6/30/03 3:30PM
Subject: Re: SAIC Proposal

Leroy I have sent Larry Novicky you memo,I am waiting for Central Office to approve or make someother recomendation.

>>> Leroy Smith 06/30/03 03:05PM >>>
Please review the below attachment. If there are any questions, please advise.

From: Alan Booth
To: Stahley, Thomas
Date: 6/30/03 3:31PM
Subject: Fwd: SAIC Proposal

Tom, I concur with Mr. Smith's proposal as attached. We'll get our (new) glass breaking booth certified by an outside source which is something we all agreed would be significantly beneficial. In the short and long run, definitely worth the $14,000 investment.

CC: Schultz, Paul; Smith, Leroy

Science Applications International Corporation
An Employee-Owned Company

{via fax and hardcopy}

10 December, 2003

TV01-719

Mr. Leroy Smith, Safety Manager
Federal Bureau of Prisons
United States Penitentiary Atwater
1 Federal Way
Atwater, CA 95301

VIA FAX: 209.386.4695

Subject: Cancellation of Offer

Reference: SAIC's Revised Time and Materials Proposal for Federal Bureau of Prisons – USP Atwater Minimizing Worker Exposure and Environmental Releases of Hazardous Emissions and Wastes at the USP Atwater's Computer Demanufacturing Facility (SAIC Letter TV01-640a dated 24 July 2003).

Dear Mr. Smith:

Science Applications International Corporation (SAIC) understands that in the four plus months since submission of the referenced proposal, circumstances at the computer demanufacturing facility have changed dramatically. In fact, we understand that circumstances have changed so dramatically that the scope of work included in the referenced proposal is no longer applicable to the requirements Atwater USP now has relative to the demanufacturing facility. Therefore SAIC hereby rescinds the referenced proposal in it's entirety.

SAIC will be submitting a completely new proposal the near future to provide Atwater USP with support for it's new requirements.

Please contact me at (805) 564-6177 if you have any questions regarding this matter.

Sincerely,

SCIENCE APPLICATIONS INTERNATIONAL CORPORATION

Tad Varesio
Contracts Manager

copies: J. Burt, SAIC
B. Muzzio, SAIC
K. Wells, SAIC

attachment 40C

On September 4 - 5, 2002, Mr. Korbelak, Industrial Hygienist conducted personal air sampling and a review of the glass breaking operation. Mr. Korbelak report doesn't address or recommends any changes to be implemented for the glass breaking booths exhaust ventilation system on correspondence dated October 1, 2002.
(See Attachments 19, 19a, 19b, 19c, & 19d)

On September 28-30, 2004, Mr. Korbelak, Industrial Hygienist conducted personal air sampling, wipe sampling, and a review of the glass breaking operation. Again, Mr. Korbelak's reports doesn't address or recommend any changes to be implemented for the glass breaking booths exhaust ventilation system on correspondence dated December 2, 2004.
(See Attachments #20, 20a, 20b, 20c, 20d, 20e, 20f, & 20g)

According to the agency's investigation, specifically when establishing the CRT booth and during periods of attempted re-engineering, feasible engineering and administrative controls were not first determined, and equipment and technical measures used were not approved for each particular use by an Industrial Hygienist or other technically qualified person.
(See Page 12, Paragraph 1 of the Report)

As well Mr. Lee is an Industrial Hygienist, which he never visited the UNICOR Computer Recycling Program at USP Atwater until December 7, 2004 during the beginning of OIA's fact finding interview with me.

NOTE: After researching through local the college and library the Industrial Ventilation manual published by the American Conference of Governmental Industrial Hygienists is a course and reference material for Industrial Hygienists.

NOTE: The air permits from San Joaquin Valley Air Pollution District was based off the air results from when the booth was inside the factory. I informed Mr. Stahley and Ms. Janice Aragon, Factory Manager, that they would need to contact San Joaquin to inform them that the glass breaking booth had been moved, new engineering control measures have been installed, which additional testing and evaluation would need to be conducted by San Joaquin Valley Air Pollution District. This has not taken place.

Paragraph 13 - Page 10:

I would only approve the glass breaking operation to re-opened for additional testing **ONLY.** We are required to wait until the air sampling results are received and reviewed to ensure the engineering control measures and other mechanical changes worked before we continue the glass breaking operation, otherwise we knowingly and wilfully continue to expose our staff and inmates. These memorandums that the Office of Internal Affairs reference, that I suggest Federal Prison Industries did not shut down are written on formal Bureau memorandums. Also, I don't suggest Federal Prison Industries did not shut down, I'm clearly stating that Federal Prison Industries didn't remain shut down, which they continued to subjected their staff and inmate workers above the OSHA exposure limits at USP Atwater, FCI Elkton, FCI Texarkana, FCI

LaTuna, FCI Marianna, and USP Lewisburg. Mr. Korbelak and myself had to formally request Federal Prison Industries to keep the glass breaking operation temporally suspended.

On November 22, 2002, I temporally suspended the glass breaking operation based on the personal air sampling conducted on November 4, 2002, I informed Mr. Stahley, that inmate workers are being exposed above Permissible Exposure Limits (PEL) for lead and cadmium. Also, a hygiene facility (i.e. shower, hand washing station, and changing area) needed to be installed. **(See Attachment #22)**

On November 24, 2002, Mr. Korbelak spoke with the Safety Specialist at USP Atwater and advised him against starting up the glass breaking operation. Mr. Korbelak also stated, you may need to conduct additional engineering control measures and sampling to get below the PEL, on the lead and cadmium issues **(Correspondence date November 27, 2002.)**
(See Attachment #21)

On March 15, 2003, Mr. Bernthold notified Mr. Rodriguez, Safety Specialist that his blood and urine results showed that his was exposed to Cadmium. Mr. Rodriguez spoke with Mr. Steve Tussey, National Safety Administrator about Mr. Bernthold exposure to cadmium, which Mr. Tussey stated, that he was under the impression that the glass breaking operation was suspended. Mr. Tussey then instructed Mr. Rodriguez that the glass breaking operation was to remain suspended until he (Mr. Tussey) authorized it to re-open. **(See Attachment 41)**

The Office of Internal Affairs state, the staff did indicate the operation was not shut down for at least a few days following the discovery that the third stage filters weren't in place. The filters were not changed out until approximately January 29, 2003. Mr. Bernthold and Mr. Stahley were aware the third stage filter were no in place before the January 21, 2003, air sampling by Occu-Tec Inc. The January 21, 2003, test result actually showed three inmates exposed to cadmium above the OSHA action level and airborne concentration of cadmium by the exhaust outlet of the both exceed the OSHA action level, permissible exposure limit, and threshold limit value.

The Office of Internal Affairs admit that an inmate working across from the booth's exhaust was exposed above the AL for Cadmium. I would have to ask, how many other staff and inmate workers were exposed during the continued operation of **EIGHT** days that weren't wearing a personal air sample to test their exposure level.

I think it's very clear why the operation was requested to be temporally suspended, because staff and inmate workers were being exposed to concentrations at least above the OSHA' action level. Also, on January 23, 2003, I formally notified Mr. Stahley in writing of the hazardous metals exiting the booths exhaust and temporally suspended the glass breaking operation. The glass breaking booth was only authorized to re-open for the personal air sampling and wipe samples to be conducted on January 21, 2003 **ONLY**. This information also went the Mr. Luna, Acting Warden. **(See Attachment #34)**

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

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MEMORANDUM FOR L. SMITH, SAFETY MANAGER

FROM: P. Rodriguez, Safety

SUBJECT: Unicor Glass Breaking Operation

This is to advise you on what transpired on 3-15-03. I was advised by Mr. Brenthold, Unicor Recycling Foreman of his blood and Urine results, for exposure to Cadmium, in the Unicor Glass Breaking Area.

Mr. Brenthold has a positive result for exposure to Cadmium. I than advise Mr. Booth, Associate Warden (C) of the finding and direction. Mr. Booth stated that he would speak to the Warden on this issue.

In addition on March 15, 2003 I contacted Mr. D. Hayden, from Occu-Tec for the last air sampling results, I was advised by Mr. Hayden that he was under the impression that the results had been fax to the safety office. I advised Mr. Hayden that I did not received any results. Mr. Hayden stated that he would fax the results to me and send a hard copy. Mr. Hayden stated that Mr. Tussey, BOP Safety Administrator was in his office, I explained the situation of the positive results. Mr. Tussey then stated that he was under the impression that the glass breaking operation was suspended. Mr. Tussey then instructed me that this area was to remain suspended until he Mr. Tussey authorized its operation.

On March 18, 2003 I informed Mrs. Gant acting Warden, Mr. Booth Associate Warden (C) and Mr. Luna, AW(O) of my conversation with Mr. Tussey. I was instructed by Mrs. Gant that the Glass Breaking Operation was to remain suspended.

Attachment #41

Conclusion Response:

The concerns expressed by the OIA report on the direction and events of environmental, safety and health concerns associated with USP Atwater's glass breaking operation is focused on the present only and not from past to present which was the largest exposure to staff, inmates, and staff families. For the record, let me clarify my position. I essentially identified several major concerns. **First**, The Safety Department advised Federal Prison Industries to conducted Initial Environmental Health Risk Assessments (i.e. Work Exposure, Metal Exposure, and Environmental Releases of Hazardous Emissions, which was denied by Mr. Steve Schwalb, Mr. Thomas Stahley, and Mr. Larry Novicky. **Second**, Federal Prison Industries eventually signed a contract with Science Applications International Corporation (SAIC) to conduct a six step task to minimize worker environmental exposure to hazardous compounds associated with the Cathode Ray Tubes (CRT's) and to evaluate the booths effectiveness. Mr. Novicky denied the of $14,000.00 to conduct the assessment and requested Mr. Stahley to get SAIC to rescind the proposal in it's entirety. **Third,** The Safety Department advised Federal Prison Industries about implementing proper engineering control measures and work practices prior to opening the glass breaking booth, which was denied by Mr. Novicky, Mr. Stahley, and Ms. Keidel. **Fourth,** The Safety Department advised Federal Prison Industries to conducted initial air sampling to determine the staff and inmate exposure would occur if an employee wasn't using a respirator while breaking CRT's, which was denied by Mr. Novicky, Mr. Stahley, Ms. Keidel, Mr. V. Smith, & Mr. Lee. **Fifth,** The Safety Department again advised Federal Prison Industries to purchase half-face respirators as a minimum protection level for the staff and inmate workers, which was denied by Mr. Stahley, Mr. Luna, and Mr. V. Smith. **Sixth,** Mr. Stahley initial provided staff and inmate workers with regular dust masks (Not Respirators) while working in the glass breaking operation, which Mr. Stahley informed me, that Mr. Novicky instructed him to provided staff and inmates with dust masks like FCI Elkton. **Seventh**, The Safety Department contracted OccuTech Inc. to perform the air sampling, which test results showed Federal Prison Industries exposed staff and inmates (glass breaking operation and factory) to lead and cadmium above the OSHA Action Level, Permissible Limit, and Threshold Limit Value from April 9, 2002 to July 9, 2002, for **NINETY (90) days** without respiratory protection. **Eighth,** The Safety Department advised Federal Prison Industries that all staff and inmate workers working the glass breaking operation should be provided HEPA Full or Half Face respirators prior to opening the glass breaking booth, which was denied by Mr. Stahley, Mr. Luna, and Mr. O'Brien. **Ninth,** Mr. Matthew Korbelak, advised Federal Prison Industries to purchase at a minimum half-face, air purifying respirators with HEPA filters. This information was also forwarded to Mr. John Lee and Mr. Larry Novicky. **Tenth,** An Executive Memorandum for Mr. J. T. O'Brien, Warden, to Mr. Robert M. Haro, Western Regional Director and Mr. Steve Schwalb, Assistant Director UNICOR Industries, addressing the implications locally that our staff and inmates were being exposed to lead, cadmium, barium and the broader implications are that there are at least three similar glass breaking operations throughout the Bureau, especially FCI Elkton, Ohio, FCI Texarkana Texas, and FCI La Tuna, Texas on July 19, 2002, which was ignored by Mr. Schwalb, Mr. Stahley, Mr. Novicky. **Eleventh,** The Safety Department advise Federal Prison Industries to develop a Compliance Program for lead and cadmium to meet the OSHA guidelines, which ws denied by Mr. Schwalb, Mr. Novicky, Ms. Keidel, and Mr. V. Smith until June 1, 2003, when UNICOR developed one to be used universally for all factories. **Twelfth,** The Safety Department advised

Federal Prison Industries, that all staff and inmates working the glass breaking operation will need to inter the medical surveillance program and have baseline blood and urine tests for lead and cadmium, which Mr. Stahley immediately conducted blood and urine test for inmate worker, but denied the staff on June 28, 2002. **Thirteen,** The Safety Department put out a second reminder to Federal Prison Industries that staff were exposed to lead and cadmium above the OSHA exposure limits, which they need to be placed in a medical surveillance program on April 16, 2003, which was denied by Mr. Stahley and Mr. Novicky **(See Attachment 149). Fourteen,** The Safety Department put out a third reminder to Federal Prison Industries that staff were exposed to lead and cadmium above the OSHA exposure limits and need to be placed in the medical surveillance program on June 11, 2003, which was denied by Mr. Stahley and Mr. Novicky . **Fifteen,** The Safety Department put out a forth reminder to Federal Prison Industries that staff were exposed to lead and cadmium above the OSHA exposure limits and need to be placed in the medical surveillance program on July 17, 2003, which Mr. Lee finally put out an e-mail advising safety staff that UNICOR will pay for the baseline testing on July 25, 2003. **(See Attachments 147, 147a, 147b, 147c, 147d, 147e, & 147f) Sixteen,** The Safety Department advised Federal Prison Industries notify staff and inmates of air monitoring and personal air monitoring results. The Safety Department advise them that the FPI was required to notify each staff and inmate affected in writing of their results, required to post the test results, and in the written notice place a plan of action to reduce their exposure, which was denied by Mr. Stahley, Mr. Novicky, Mr. Clements, Mr. Lee and Mr. Tussey. **Seventeen,** Mr. Korbelack, Industrial Hygeinist, OCCU-TEC Inc, Contractor, and myself advised Federal Prison Industries that showers, hand washing, and change rooms were required to be installed according to OSHA Cadmium requirements, which was denied by Mr. Sthaley, Mr. Luna, Mr. Booth, Mr. Schultz, Mr. O'Brien, Mr. Schultz, Mr. Schwalb, Mr. Novicky, Ms. Keidel, and Mr. Clements. **Eighteen,** The Safety Department advise Federal Prison Industries from June 2002 through January 2004, that the glass breaking operations where to remain temporarily suspended until the Safety Manager conducts an re-inspection and written approval for the booth to re-open, which Mr. Stahley, Mr. Schultz, Ms. Aragon, Mr. Novicky ordered the glass breaking operation to re-open prior to any inspection. **Nineteen,** Federal Prison Industries was throwing the booth filters in the general waste stream, which would be deposited in the county landfill. The Safety Department advise Federal Prison Industries that the filters in the booth need to be analyzed by an outside certified Lab, which they will need to conduct a Toxic Characteristics Leaching Procedure (TCLP) to determine disposal requirements according to EPA on May 1, 2002. The TCLP results identified large concentrations of lead, cadmium, and barium, which exceeded EPA 40 CFR 261.2 for hazardous waste disposal purposes on July 1, 2002.
(See Attachments 145, & 145a) Twenty, The Safety Department advise Federal Prison Industries to develop and conduct staff and inmate training on Lead and Cadmium on July 18, 2002, which was denied initially by Mr. Stahley, then Federal Prison Industries requested technical assistance on June 10, 2003. **(See Attachments 148, 148a, 148b, & 148c) Twenty-one,** Federal Prison Industries is not ensuring staff remove their protective clothing (i.e., Work Uniform) contaminated with lead and cadmium at the completion of the work shift and do so only in change room, which causes cross-contaminates in the staff's vehicle, home, family clothing, and most importantly exposing their spouse and children to low concentration or low doses of lead and cadmium. **Twenty-two,** Federal Prison Industries is not notifying staff verbally or in writing of the harmful affects of exposure to lead and cadmium while cleaning or laundering protective clothing or equipment.

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

May 1, 2002

MEMORANDUM FOR THOMAS W. STAHLEY, ASSOCIATE WARDEN (I&E)

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Glass Breaking Booth Filters**

I am very concerned with the Glass Breaking Booth filters when they are needed to be exchanged out, which the filters will be saturated with toxic metals. The Safety Department is strongly recommending the filters to be analyzed by taking a Toxic Characteristic Leaching Procedure (TCLP) through an outside certified lab. This will ensure the filters content is below the EPA hazardous waste and disposal standards.

If I can provide any further assistance, please do not hesitate to let me know.

cc: Warden AW(C) Factory Manager Dave Clements
Larry Novicky Varney Smith Matthew Korbelak
Cynthia Keidel UNION

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

July 01, 2002

MEMORANDUM FOR THOMAS W. STAHLEY, ASSOCIATE WARDEN (I&E)

FROM: L. A. Smith, Safety Manager

SUBJECT: Glass Breaking Exhaust Filters

As a precautionary measure the glass breaking exhaust filters were tested to identify the metal content as hazardous or non-hazardous waste for disposal purposes. This metal analysis was conducted on June 14 - 17, 2002, by American Westech Inc. Upon review of the TCLP Metals Analysis data received on June 17, 2002, identified large concentrations of Lead, Barium and Cadmium. Under 40 CFR 261.24, which identifies hazardous waste as 5 parts per million or greater. The analysis results far exceeds the EPA guidelines.

Effective July 1, 2002, the glass breaking primary and secondary exhaust filters will need to be removed and handled as hazardous waste. The following training and procedures will need to be implemented prior to replacing, handling and disposal:

1. Identify and provide two (2) UNICOR staff the mandatory 40 hour HAZWOPER training for handling and disposal of hazardous waste.

2. Provide all staff and inmates proper procedures and personal protective equipment requirements for the replacing, handling and disposal of the primary and secondary exhaust filters.

3. Identify the Satellite site (temporary) were this material will stored prior to disposal.

4. Identify a certified company (i.e., Safety Kleen) for disposal of the primary and secondary exhaust filter.

The above mentioned steps will need to be implemented prior to any replacement of the primary and secondary exhaust filters. This will be contingent upon the Safety Department verification. This will ensure USP Atwater remains in compliance with Bureau Policy and all Regulatory Agencies.

cc: Associate Warden (O) Safety File Union

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

July 17, 2003

MEMORANDUM FOR THOMAS W. STAHLEY, ASSOCIATE WARDEN (I&E)

FROM: L. A. Smith, Safety Manager

SUBJECT: **Initial Medical Examination**

Prior to the re-opening of the CRT glass breaking operations, all UNICOR staff and inmates (i.e., management, line staff, CRT workers only) shall be medically cleared to include blood and urine for lead and cadmium. This will ensure compliance with OSHA 29 CFR 1910.1025 (Lead) and 1910.1027 (Cadmium) guidelines. The following initial biological monitoring requirements are for your review and implementation;

Cadmium - 29 CFR 1910.1027, section (j), medical surveillance:

1. **Provide physician with:**

   a. Copy of the standard and all appendices.
   b. Description of the affected worker's former, current, and anticipated duties as they relate to the worker's occupational exposure to cadmium.
   c. The worker's former, current, and anticipated future levels of occupational exposure to cadmium.
   d. Description of any personal protective equipment, including respirators, used or to be used by the worker, including when and for how long the worker has used the equipment.
   e. Relevant results of previous biological monitoring and medical examinations

2. **Initial examination:**

   a. Detailed medical and work history.
   b. Any history of renal, cardiovascular, respiratory, hematopoietic, reproductive, and/or musculo-skeletal system dysfunction.

c. Current usage of medication with potential nephrotoxic side-effects.
d. Smoking history.
e. Tests

I. Cadmium in urine (CdU), standardized to grams of creatinine (g/Cr)
II. Beta-2 microglobulin in urine (B(2)-M), standardized to grams of creatinine (g/Cr), with pH specified, as described in Appendix F of the standard.
III. Cadmium in blood (CdB), standardized to liters of whole blood (lwb).

f. UNICOR shall obtain a written, signed medical opinion from the examining physician for each medical examination performed on each worker to include:

I. Physician's diagnosis for the worker.
II. Physician's opinion as to whether the worker has any detected medical condition(s) that would place the worker at increased risk of material impairment to health from further exposure to cadmium, including any indications of potential cadmium toxicity.
III. Results of any biological or other testing or related evaluations that directly assess the worker's absorption of cadmium.
IV. Any recommended removal from, or limitation on the activities or duties of the worker or on the worker's use of personal protective equipment, such as respirators.
V. A statement that the physician has clearly and carefully explained to the worker the results of the medical examination, including all biological monitoring results and any medical conditions related to cadmium exposure that require further evaluation or treatment, and any limitation on the worker's diet or use of medications.

g. UNICOR shall obtain a copy of the results of any biological monitoring provided by UNICOR to a worker.

I. UNICOR shall instruct the physician not to reveal orally or in the written medical opinion given to UNICOR specific findings or diagnoses unrelated to occupational exposure to cadmium.

i. See periodic operations section for follow up biological monitoring

II. Any recommended special protective measures to be provided to the worker, or limitations to be placed upon the worker's exposure to lead.
III. Any recommended limitation upon the worker's use of respirations, including a determination of whether the worker can wear a powered air purifying respirator if a physician determines that the worker cannot wear a negative pressure respirator.
IV. The results of the blood lead determinations.

h. UNICOR shall instruct each examining and consulting physician to:

a. Not to reveal either in written opinion, or in any other means of communication with UNICOR, findings, including laboratory results, or diagnoses unrelated to a worker's occupational exposure to lead.
b. Advise the worker of any medical condition, occupational or nonoccupational, which dictates further medical examination or treatment.
c. See periodic operations section for follow up biological monitoring

3. **Periodic Operations**:

a. Initial Testing:

I. UNICOR will issue a purchase order to a third party contractor using the below scope of work as a minimum guideline. Additional state requirements may be included if mandated.

II. Time Frame:

1. Within 30 days of activation of the glass recycling operation.
2. Whenever there are significant changes to the operation that may affect air flow.

III. Personal Air Monitoring:

1. OSHA approved/OSHA Methodology.
2. On wokers.

a. Staff.
b. Inmates.
c. In the immediate vicinity of glass recycling

Lead - 29 CFR 1910.1025, section (l), medical surveillance:

1. **Provide Physician with:**

   a. The Associate Warden (I&E) or Superintendent of Industries is responsible for administering this section.
   b. Copy of the standard and all appendices.
   c. Description of the affected worker's duties as they relate to the worker's exposure.
   d. Worker's exposure level or anticipated exposure level to any other toxic substance (if applicable).
   e. Description of any personal protective equipment used or to be used.
   f. Prior blood lead determinations.
   g. All prior written medical opinions concerning the worker in UNICOR's possession or control.

2. **Initial examination:**

   a. Detailed medical and work history.
   b. Thorough physical examination, with particular attention to teeth, gums, hematologic, gastrointestinal, renal, cardiovascular, and neurological systems.
   c. Blood pressure measurement.
   d. Blood sample and analysis of

      I. Blood lead level.
      II. Hemoglobin and hematocrit determinations, red cell indices, and examination of peripheral smear morphology.
      III. Zinc protaporphyrin.
      IV. Blood urea nitrogen
      V. Serum creatinine

   e. Routine urinalysis with microscopic examination.

   f. Any laboratory or other test, which the examining physician deems necessary by sound medical practice.

   g. Written medical opinions - UNICOR shall obtain and furnish the worker with a copy of a written medical opinion from each examining or consulting physician which contains the following information:

      I. The physician's opinion as to whether the worker has any detected medical condition which would place the worker at increased risk of material impairment of the worker's health from exposure to lead.

operations.

d. 8-hour time weighted average.
e. Full shift.
f. Normal to worst-case work load.
g. Routine methods and controls.
h. Analyzed for:

I. Lead
II. Cadmium
III. Barium
IV. Beryllium

3. **Follow-up Biological Testing**:

a. Cadmium Medical.

1. Period medical monitoring for cadmium is required within one year of the initial and thereafter at least biannually (every two years).

a. UNICOR shall provide at least the minimum level of periodic medical surveillance, which consists of periodic medical examinations and periodic biological monitoring. A periodic medical examination shall be provided within one year after the initial examination and thereafter at least biannually, either as part of a periodic medical examination or separately as periodic biological monitoring (OSHA 29 CFR 1910.1927 (1)(4)(i).)

b. Lead Medical.

1. UNICOR shall institute a medical surveillance program for all workers who are or may be exposed above the action level for more than 30 days per year (OSHA 29 CFR 1910.1025 (j)(1)(i).)

a. At least annually fir each worker from whom a blood sampling test conducted at any time during the proceeding 12 months indicated a blood lead level at or above 40 ug/100g (OSHA 29 CFR 1910.1025 (j)(3)(i)(A).)

b. Prior to assignment for each worker being assigned for the first time to an area in which airborne concentrations of lead are at or above the action level (OSHA 29 CFR 1910.1025 (j)(3)(i)(B).)

c. As soon as possible, upon notification by a worker either that the worker has developed signs or symptoms commonly associated with lead intoxication, that the worker desires medical advise concerning the effects of current or past exposure to lead on the worker's ability to procreate a healthy child, or that the worker has demonstrated difficulty in breathing during a respirator fitting test or during use of the respirator (OSHA 29 CFR 1910.1025 (j)(3)(j)(C).)

If there are any questions concerning the initial medical examination, please do not hesitate to let me know.

cc: AW(C) Union Regional Safety Administrator Safety File

From: John L. Lee
To: Barnes, Michael; Hicks, Ron; Smith, Leroy; Terrell, Don L.; Van Dusen, Christopher; Williams, Derrek L.
Date: 7/25/03 4:33AM
Subject: Fwd: Medical Baseline Testing Procedures

FYI - UNICOR has decided to provide baseline cadmium and lead tests for staff assigned to the glass recycling operation. the attached forms were developed to facilitate the baseline testing program.

>>> Cynthia Keidel 07/24/03 12:47PM >>>
Attached are the forms you provide to staff for their baseline biological testing. In order to save money on federal express, I have placed the links for the OSHA Standards and Appendices that must be given to the employee to take to the physician.

The physician is to bill the charges directly to UNICOR, therefore I have also included the Customer Registration form.

If you have any questions, please contact me or Larry Novicky.

OSHA Web Site: You must print out the OSHA standard and all appendices (even the ones that say removed).

http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=10035

http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=10030

attachment #142

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

July 18, 2002

MEMORANDUM FOR THOMAS W. STAHLEY, ASSOCIATE WARDEN (I&E)

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Employee and Inmate Training**

To comply with OSHA 29 CFR 1910.1025 for Lead and 29 CFR 1910.1027 for Cadmium training requirements. All factory personnel must be apprized of the hazards of chemicals present in their work area. This training must be provided before initial assignment and before new exposure situations. PPE necessary for the safe handling of cadmium and lead bearing materials must be also provided. The following information is provided for your review;

Training: ***Topics to be included in this training are as follows:***

a. The contents of 29 CFR 1910.1025, *Lead*, and 29 CFR 1910.1027, *Cadmium*.

b. The contents of this Cadmium & Lead Compliance Program.

c. How to read and interpret Material Safety Data Sheets.

d. The location of Material Safety Data Sheets and this Cadmium & Lead Compliance Program.

e. The PELs of the chemicals that they may work with or come in contact with.

d. The specific nature of the operations which could result in exposure to cadmium and lead above the action level.

e. Signs and symptoms associated with exposure to any chemicals used in the factory.

f. Safe handling, storage, and disposal information for the materials that they will be working with.

g. Methods and observations that may be used to detect the presence and release of hazardous materials.

h. The physical and health hazards of the chemicals that they may work with.

i. Measures that workers can take to protect themselves from hazards including the use of Standard Operating Procedures and personal protective equipment.

j. Procedures to be followed in case of injury, chemical spill, fire, or similar emergency.

Refresher Training:

Factory Manager shall ensure refresher training will be completed when new exposure situations arise. Such situations include the use of new chemicals, greater quantities of chemicals, and different procedures. Factory Manager shall also provide refresher training when it is observed that an worker is not following the safe procedures listed in this Plan or in the Standard Operating Procedures for the task that they are conducting.

If I can provide any further assistance, please do not hesitate to let me know.

cc: Warden AW(O) Factory Manager Larry Novicky Safety File Union

attachment #148a

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

June 10, 2003

MEMORANDUM FOR THOMAS W. STAHLEY, ASSOCIATE WARDEN (I&E)

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Employee and Inmate Training**

Per your requested information concerning the training guidelines to comply with OSHA 29 CFR 1910.1025 for Lead and 29 CFR 1910.1027 for Cadmium. All factory personnel must be apprized of the hazards of chemicals present in their work area. This training must be provided before initial assignment and before new exposure situations. PPE necessary for the safe handling of cadmium and lead bearing materials must be also provided. The following information is provided for your review;

Training: ***Topics to be included in this training are as follows:***

a. The contents of 29 CFR 1910.1025, *Lead*, and 29 CFR 1910.1027, *Cadmium*.

b. The contents of this Cadmium & Lead Compliance Program.

c. How to read and interpret Material Safety Data Sheets.

d. The location of Material Safety Data Sheets and this Cadmium & Lead Compliance Program.

e. The PELs of the chemicals that they may work with or come in contact with.

d. The specific nature of the operations which could result in exposure to cadmium and lead above the action level.

e. Signs and symptoms associated with exposure to any chemicals used in the factory.

f. Safe handling, storage, and disposal information for the materials that they will be working with.

attachment 1486

g. Methods and observations that may be used to detect the presence and release of hazardous materials.

h. The physical and health hazards of the chemicals that they may work with.

i. Measures that workers can take to protect themselves from hazards including the use of Standard Operating Procedures and personal protective equipment.

j. Procedures to be followed in case of injury, chemical spill, fire, or similar emergency.

Refresher Training:

Factory Manager shall ensure refresher training will be completed when new exposure situations arise. Such situations include the use of new chemicals, greater quantities of chemicals, and different procedures. Factory Manager shall also provide refresher training when it is observed that an worker is not following the safe procedures listed in this Plan or in the Standard Operating Procedures for the task that they are conducting.

NOTE: The implementation of the training plans and actual training provided to staff and inmates need to be implemented prior to the State EPA Inspection on June 23, 2003.

If I can provide any further assistance, please do not hesitate to let me know.

cc: AW(C) Factory Manager

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

April 16, 2003

MEMORANDUM FOR THOMAS W. STARLEY, ASSOCIATE WARDEN (I&E)

FROM: L. A. Smith, Safety Manager

SUBJECT: **Medical Surveillance**

As a precautionary measure all UNICOR Employees and Inmate workers in the monitor glass breaking operation (CRT's) shall be provided an initial and periodic blood and urine test for Lead, Cadmium, Barium, and Beryllium. It is not expected that the Environmental or Occupational Exposure Levels will be exceeded. The testing is paramount in developing a blood and urine baseline for historical data and to ensure UNICOR staff and inmate workers are being protected.

UNICOR staff and Inmate workers in the monitor glass breaking operation (CRT's)shall be provided a copy of 29 CFR 1910.1027 - Appendix A - Physician and Employee substance Safety Data Sheet for Cadmium. The employee will be provided two copies, which the employee shall provide a copy to their physician. In addition, UNICOR staff and Inmate workers in the monitor glass breaking operation (CRT's) shall be provided a copy of 29 CFR 1910.1027 - Appendix D - Occupational Health History Interview with reference to Cadmium Exposure. The interview form for cadmium exposure shall be read and signed by UNICOR staff and Inmate workers in the monitor glass breaking operation (CRT's) prior to the physicians interview. The occupational health history interview form for staff shall be returned back to the Safety Department for distribution to the Office of Worker's Compensation (OWCP)and Health Services. Health Services will retain the original signed copy of the occupational health history interview forms in the staff and inmate medical files.

NOTE: Biological monitoring for Cadmium includes; (1) Cadmium in urine (CdU), standardized to grams of creatinine (g/Cr), (2) Beta-2 microglobulin in urine (B2-M) - standardized to grams of creatinine (g/Cr), and Cadmium in blood (CdB) - standardized to liters of whole blood (lwb).

UNICOR will be responsible for the issuance of this memorandum to UNICOR staff and review this memorandum with inmate workers in the monitor glass breaking operation. Also, UNICOR will be responsible for providing a copy of the Appendix A and Appendix D to UNICOR staff and Health Services. Health Services will be responsible for conducting the interviews with the inmate worker in the glass breaking operation (CRT's).

If there are any questions, please do not hesitate to contact me.

cc: Warden AW (C) AW(O) HSA Safety File Union

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

June 11, 2003

MEMORANDUM FOR THOMAS W. STAHLEY, ASSOCIATE WARDEN (I&E)

FROM: L. A. Smith, Safety Manager

SUBJECT: **Medical Surveillance**

This is a second reminder, that as a precautionary measure all UNICOR Employees and Inmate workers in the monitor glass breaking operation (CRT's) shall be provided an initial and periodic blood and urine test for Lead, Cadmium, Barium, and Beryllium. It is not expected that the Environmental or Occupational Exposure Levels will be exceeded. The testing is paramount in developing a blood and urine baseline for historical data and to ensure UNICOR staff and inmate workers are being protected.

UNICOR staff and Inmate workers in the monitor glass breaking operation (CRT's) shall be provided a copy of 29 CFR 1910.1027 - Appendix A - Physician and Employee substance Safety Data Sheet for Cadmium. The employee will be provided two copies, which the employee shall provide a copy to their physician. In addition, UNICOR staff and Inmate workers in the monitor glass breaking operation (CRT's) shall be provided a copy of 29 CFR 1910.1027 - Appendix D - Occupational Health History Interview with reference to Cadmium Exposure. The interview form for cadmium exposure shall be read and signed by UNICOR staff and Inmate workers in the monitor glass breaking operation (CRT's) prior to the physicians interview. The occupational health history interview form for staff shall be returned back to the Safety Department for distribution to the Office of Worker's Compensation (OWCP) and Health Services. Health Services will retain the original signed copy of the occupational health history interview forms in the staff and inmate medical files.

NOTE: Biological monitoring for Cadmium includes; (1) Cadmium in urine (CdU), standardized to grams of creatinine (g/Cr), (2) Beta-2 microglobulin in urine (B2-M) - standardized to grams of creatinine (g/Cr), and Cadmium in blood (CdB) - standardized to liters of whole blood (lwb).

UNICOR will be responsible for the issuance of this memorandum to UNICOR staff and review this memorandum with inmate workers in the monitor glass breaking operation. Also, UNICOR will be responsible for providing a copy of the Appendix A and Appendix D to UNICOR staff and Health Services. Health Services will be responsible for conducting the interviews with the inmate worker in the glass breaking operation (CRT's).

If there are any questions, please do not hesitate to contact me.

cc: Warden AW (C) AW(O) HSA Safety File Union

Twenty-three, Federal Prison Industries built a Food Service in the main factory knowing the CRT's contained toxic materials, which based off all wipe samples conducted through the UNICOR factory by outside contractor and the national industrial hygienist high probability of cross-contamination through ingestion.

Listing of Actual/Apparent Violations: The list below is the violation of Law, Rule, or Regulation, Specific Danger to Public Health or Safety, Abuse of Authority at the Federal Prison Industry Factories, USP Atwater, California, FCI Elkton, Ohio, FCI Texarkana, Arkansas, FCI Marianna, Florida, FCI LaTuna, Texas, and USP Lewisburgh, Pennsylvania

1. Executive Order 12196.
2. OSHA 29 CFR 1960.
3. Program Statement 1600.08 Occupational Safety and Environmental Health, Chapter 1, Page 3, Section 5 - Safety Manager - serves as staff advisor to the Chief Executive Officer of their institutions on matters relating to safety and environmental health program. Professional judgement shall be exercised when regulation and policy is not item specific.
4. Environmental Protection Agency (EPA) Risk Assessment requirements for work exposure, metal exposure, and environmental releases of hazardous emissions.
5. OSHA 1910.1000 Air Contaminants - to determine employee exposure.
6. OSHA 29 CFR 1910.1025 Lead (d)(1)(i)(2) Exposure Monitoring - Initial Determination to assess employee exposure which would occur if the employee were not using a respirator.
7. OSHA 29 CFR 1910.1027 Cadmium(d)(1)(i)(2)(i) Exposure Monitoring - Specific Initial Monitoring to assess employee exposure which would occur if the employee were not using a respirator.
8. Bureau's Program Statement 1600.08, Chapter 2, Page 17, Section 3 - Toxic and Hazardous Substances. **(See Attachment 146)**
9. OSHA 29 CFR 1910.1000(e) Administrative or engineering controls must first be determined and implemented whenever feasible, and equipment or technical measures used for this purpose must be approved for each particular use by use by a competent industrial hygienist or other qualified technically qualified person.
10. Program Statement 1600.08 Occupational Health and Environmental Safety, Chapter 1, Page 24, Section P(1) - Personal Protective Equipment - shall be provided and worn in accordance with 29 CFR, OSHA 1926, Construction Standards, or as deemed necessary by the Safety Manager.
11. Program Statement 1600.08 Occupational Health and Environmental Safety, Chapter 1, Page 24, Section P(6) - Personal Protective Equipment - Purchase approvals of such equipment shall be routed through the Safety Department to insure it meets all current testing and certification requirements.
12. OSHA 29 CFR 1910.132 General requirements for Personal Protective Equipment and Subpart I Appendix B - Hazard Assessment - Harmful Dust.
13. OSHA 29 CFR 1910.134 Respiratory Protection and Respirator Cleaning Procedures.
14. OSHA 29 CFR 1910.1027(g)(3) Cadmium Respiratory Protection and Respirator selection.

(4) Equipment modification will result in increased performance or change in character, such as the application of sound absorbent material.

3. Toxic and Hazardous Substances

a. Section 1910.1000 of the OSHA regulations shall be the governing authority for determining employees' exposure to any material listed in table Z-1, Z-2, or Z-3 of that section. The determination of noncompliance with the permissible exposure limits (PELs) requires measurement and documentation of an overexposure to at least one employee. For air contaminants having PELs, sampling must be conducted within the breathing zone -- a sphere about two feet in diameter surrounding the head. Sampling, either personal or area, shall be performed by a qualified source.

b. When testing indicates controls are needed to prevent atmosphere contamination, engineering control measures shall be used as far as possible (e.g., enclosure or confinement of the operation, general and local ventilation and substitution of less toxic materials). When effective engineering controls are not feasible or while they are being instituted, respirators shall be used pursuant to the requirements of section 1910.134 of the OSHA regulations, requiring a local supplement governing the use of respirators, their selection and areas where use is mandatory. The local supplement will also contain all elements necessary for a "minimally" acceptable program as required by OSHA, to include:

(1) Written standard operating procedures governing the selection and use of respirators shall be established.

(2) Respirators shall be selected on the basis of hazards to which the worker is exposed.

(3) The user shall be instructed and trained in the proper use of respirators and their limitations.

(4) Where practicable, the respirators should be assigned to individual workers for their exclusive use.

(5) Respirators shall be regularly cleaned and disinfected. Those issued for the exclusive use of one worker should be cleaned after each day's use, or more often if necessary. Those used by more than one worker should be cleaned and disinfected after each use.

(6) Respirators shall be stored in a convenient, clean and sanitary location.

15. OSHA 29 CFR 1910.1025(f)(3) Lead Respiratory Protection and Respiratory Selection.

16. OSHA 29 CFR 1910.1025(3) Written Compliance Program.

17. OSHA 29 CFR 1910.1025(2) Written Compliance Program.

18. OSHA 29 CFR 1910.1025(j) Lead Medical Surveillance and OSHA 29 CFR 1910.1025(j)(iii) Without Cost to the Employee.

19. OSHA 29 CFR 1910.1027(1) Cadmium Medical Surveillance and OSHA 29 CFR 1910.1027(1)(iii) Without Cost to the Employee.

21. OSHA 29 CFR 1910.1025(d)(8) Lead - Employee Notification - within 5 days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represents that employees exposure.

22. OSHA 29 CFR 1910.1027(d)(5) Cadmium - Employee Notification of Monitoring Results within 15 days of receipt of the results, notify each affected employee individually in writing, and post the results of the exposure monitoring in an appropriate location that is accessible to all affected employees.

23. OSHA 29 CFR 1910.1025(i) Lead - Hygiene Facilities and Practices.

24. OSHA 29 CFR 1910.1027(j) Cadmium - Hygiene Facilities and Practices.

25. Program Statement 1600.08 Occupational Health and Environmental Safety, Chapter 1, Page 5, Section D - Imminent Hazard - when a Safety Manager determines that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm, he shall inform the affected employees of the danger and shut down the work or process until such danger can be eliminated. Reactivation of the work or process shall be contingent upon the Safety Manager's reinspection and written approval.

26. EPA 40 CFR 261.24 - identifies hazardous waste.

27. OSHA 29 CFR 1910.1025(1)(m) lead and 29 CFR 1910.1027(m)(2) cadmium - Employee information, training, and signage was not provided.

28. OSHA 29 CFR 1910.1025 lead (2)(iv), Cleaning and Replacement, and 1910.1027 cadmium(2)(ii)(3), Cleaning, Replacement, and Disposal - employer shall assure that all protective clothing (i.e., Work Uniforms) is removed at the completion of a work shift only in a change room. The employer shall assure that no employee takes lead-contaminated or cadmium-contaminated protective clothing or equipment from the workplace.

29. OSHA 29 CFR 1910.141(g)(2), Eating and Drinking areas - no employee shall be allowed to consume food or beverages in a toilet room nor in any area exposed to a toxic material.

30. OSHA 29 CFR 1910.1027(6)(v) cadmium - the employer shall not use employee rotation as a method of compliance.

31. OSHA 29 CFR 1910.1025(4)(i)(ii) lead, Mechanical ventilation - 1910.1027(3)(iii) cadmium, Mechanical ventilation - mechanical ventilation wasn't followed by the OSHA regulations.

Action Planned or Should be Taken:

By the combined thirty-one (31) Law, Rule, or Regulation and Specific Danger to Public Health or Safety, combined should bring a different statement then **"LEARN as YOU GO"** approach made by Federal Prison Industry Officials from FCI Elkton, Ohio. This comment is an understatement when it comes to the safety and health of our staff, inmates, and staff families

who were subjected to the hazardous metals unknowingly from 1994 to 2005. This finally proves production, profit, and keeping inmates working is more important then life itself.

The only way to ensure an impartial and comprehensive investigation would be to have an outside independent agency to conducted the investigation initially. I understand the difficulty for the Office of Internal Affairs to conduct an impartial and comprehensive investigation when there a component of the Director's Office, Bureau of Prisons.

The following correspondence were provided to the Director Bureau of Prisons: On September 13, 2004 - disclosure of violations of law, rule, regulation, specific danger of public health and safety, and abuse of authority, September 23, 2004 - endangering staff and inmate safety and health, December 28, 2004 - harmful dust, abuse of authority, and endangering the safety and health of staff and inmates.

The following correspondence were provided to the Western Regional Director: On September 14, 2004 - disclosure of violations of law, rule, regulation, specific danger of public health and safety, and abuse of authority, September 23, 2004 - September 23, 2004 - endangering staff and inmate safety and health, and December 28, 2004 - harmful dust, abuse of authority, and endangering the safety and health of staff and inmates.

NOTE: During an EEO interview **Q:** Did you ever receive any e-mail messages from Mr. Smith regarding alleged discrimination by the Executive Assistant? **A:** Mr. J. E. Gunja I don't know Emelio, because what happened was as he was e-mailing me all the time. I just started erasing. I actually responded back once telling him he needed to deal with his Warden on that. This wasn't really discrimination. It was more on the issue, what he thought was going on in UNICOR. I never received any e-mail from Mr. Gunja, unless he sent it to my e-mail box at the Institution, which I have no access to. **(See Attachments 42, 42a, & 42b)**

NOTE: On November 12, 2004, I asked Mr. J. E. Gunja, if we could hold a informal meeting in th Regional Office to talk about the current issues, I have brought to light about USP Atwater. These issues just don't affect me, they affect my family, my employee, the institution, and the Bureau of Prisons. I then receive a phone call from Mr. Jesse Gonzalez, Executive Assistant, USP Atwater, his stated, "Mr. Gunja said to tell you that he will not be meeting with you. **(See Attachments 43, 43a, & 43b)**

The following correspondence was provided to the Western Regional Director and Assistant Director Federal Prison Industries and Education: On July 19, 2002, Executive Memorandum addressing the implications locally that our staff and inmates were being exposed to lead, cadmium, barium and the broader implications are that there are at least three similar glass breaking operations throughout the Bureau, especially FCI Elkton, Ohio, FCI Texarkana Texas, and FCI La Tuna, Texas, which to date they have not conducted initial hazardous risk assessments nor in compliance with OSHA guidelines.
(See Attachments 12, 12a, 12b, 12c, 12d, & 12e)

NOTE: Initial test results: 40 CFR 262.11 Hazardous Waste Determination. To determine if the

U.S. DEPARTMENT OF JUSTICE
EQUAL OPPORTUNITY PROGRAM

AFFIDAVIT

NAME OF COMPLAINANT: Leroy Smith

CASE NO: P-2004-0021

PERSON MAKING STATEMENT

NAME: Joseph E. Gunja **DATE:** February 12, 2005

POSITION AND GRADE: Western Regional Director

EMPLOYER: Federal Bureau of Prisons, Western Regional Office, Dublin, California

---

I, Joseph Gunja hereby solemnly (swear) (affirm):

Q Good Afternoon, sir, my name is Emilio K. Tio. I am a Federal Bureau of Prisons EEO investigator. I was assigned Mr. Smith's case of alleged discrimination by Ms. Mina Raskin, EEO Officer for the Federal Bureau of Prisons. This is an official Federal Bureau of Prisons investigation. I will try to keep your responses to questions as confidential as possible. However, there are those that have the legal right to know that can request and acquire the information. Sir, do you swear or affirm that the statements you are about to provide are the truth to the best of your knowledge and/or recollection?

A Yes.

Q Could you please state your full name and spell your last name?

A Joseph E. Gunja

Q Okay. Thank you. What agency do you work for?

A Regional Director, Western Region, for the Federal Bureau of Prisons.

Q How long have you worked for this agency?

A Twenty-Five Years.

Attachment #42

A Probably when I first got his email. Initially this was more regarding safety issues. I then called Warden Schultz, and he said he was in the process of filing a complaint based on what Mr. Gonzalez or himself and the dealings they had with him. That was about it. Probably like middle of last year.

Q So, Warden Schultz did discuss Mr. Smith's complaint with you?

A He said he was upset and Mr. Smith was in the process of filing something.

Q To the best of your knowledge, do you recall if Mr. Smith had ever telephonically contacted you regarding his issues?

A No, he never did.

Q Other then the discussion you had with Warden Schultz, did any other staff discuss Mr. Smith's issue with you?

A No.

Q Other then the discussion you had with Warden Schultz regarding Mr. Smith's issues, did you have any discussion with the Executive Assistant dealing with alleged discrimination on the basis of reprisal?

A No.

Q Did you ever receive any emails messages from Mr. Smith regarding his allegation of alleged discrimination by the Executive Assistant?

A I don't know Emelio, because what happened was as he was emailing me all the time. I just started erasing. I actually responded back once telling him he needed to deal with his Warden on that. This wasn't really discrimination. It was more on the issue, what he thought was going on in UNICOR.

Q Do you recall at any time the Warden Schultz had told you that his Associate Warden had discussed this issue with Mr. Smith and to the best of his knowledge had resolved it?

A Yes.

Q To the best of your knowledge and or recollection, do you recall if Mr. Smith had sent you emails or telephonically contacted you regarding any other issues allegdging discrimination in any other manner?

A Not that I can remember.

Attachment #42a

Q To the best of your knowledge and or recollection, have you ever heard or seen the warden, take any action against Mr. Smith that could have been perceived as being discriminatory because of reprisal?

A No.

Q To the best of your knowledge and or recollection, have you ever heard or seen the Executive Assistant take any action against Mr. Smith that could have been perceived as discriminatory based on his disability or reprisal?

A No.

Q Sir, do you have anything you would like to add to the records in regards to Mr. Smith's allegation of discrimination?

A No.

Q If not, sir, thank you for your time. This concludes the interview. The time now is 12:07 p.m. Denver, Colorado time and the date is February 22, 2005.

PURSUANT TO 28 U.S.C. 1746, I HAVE READ THE ABOVE STATEMENTS CONSISTING OF ____ PAGES AND IT IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

AFFIANT 2/24/05 DATE

INTERVIEWED BY EMELIO K TIO, EEO INVESTIGATOR 2/24/05

Attachment #426

Mr. Gunja, I would like to see if we can hold an informal meeting in the Regional Office to talk about the current issues I have brought to light about USP Atwater. These issue just don't affect me, they affect my family, my employee, the institution, and the Bureau of Prisons. If you would want someone present during the informal meeting, I have no objections to that format.

I look forward to speaking with you and resolving these issues as quickly as possible. Thanks for your time and consideration on this matter.

Attachment #13

November 12, 2004

MEMORANDUM FOR TO WHOM IT MAT CONCERN

FROM: Leroy A. Smith, Safety Manager

SUBJECT: Phone Conversation With Mr. Gonzalez

On November 12, 2004, at approximately 3:34 p.m., I received a phone call from Mr. Gonzalez.

Mr. Gonzalez stated, I called you earlier, why haven't you called me back!

I replied, that I was out with my son and there were no messages on my voice mail.

Mr. Gonzalez then stated, I listened to the voice mail you have, then changed the subject and asked, you e-mailed the Regional Director to have a meeting with him?

I replied, Yes, I e-mailed him to setup an informal meeting.

Mr. Gonzalez then stated, Mr. Gunja said to tell you that he will not be meeting with you.

I asked, did Mr. Gunja mention why we will not be able to meet?

Mr. Gonzalez replied, No, I'll speak to you later and hung up the phone.

Attachment # 43a

Mr. Gunja, I received a call today at 3:34 p.m. fro Mr. Gonzalez, Executive Assistant, USP Atwater, pertaining to the informal meeting that I have requested with you. I am very sorry that you have declined to meet with me and try to resolve the issues concerning USP Atwater.

I am very grateful for you time and consideration on this matter. Once again, thank you.

Attachment #43b

solid waste is a hazardous waste: Lead **EPA Max 5 mg/L liquid form**, UNICOR 1970 mg/kg solid waste, UNICOR 98.3 mg/L liquid form, Cadmium **EPA Max 1 mg/L liquid form**, UNICOR 5.8 mg/kg solid waste, UNICOR 0.29 mg/L liquid waste, Barium **EPA Max 100 mg/L liquid form**, UNICOR 250 mg/kg solid waste, and UNICOR 12.5 mg/L liquid waste. 29 CFR 1926.62 (d) Exposure Assessment. The employer who has a workplace or operation covered by this standard shall initially determine if any employee may be exposed to lead at or above the action level: Lead OSHA Action Level 30 ug/m3, OSHA PEL 50 ug/m3, **UNICOR 99 ug/m3**, Cadmium OSHA Action Level 0.0025 mg/m3, OSHA PEL 0.005 mg/m3, **UNICOR 0.05 mg/m3**.

During Mr. Thomas Stahley's deposition: **Q:** What is given to the inmates in terms of protective equipment? **A:** We gave them gloves, eye protection, ear protection. And I'm sorry, and we also give them jumpsuits. **Q:** Have the procedures for what type of equipment gear are given to the inmates, have they changed over the time that you've worked at Atwater? **A:** So if you're asking me if the protective equipment in the glass breaking operation has increased, then the answer is yes. **Q:** And how has it increased? **A:** We went to full face, we went to Tyvek suits, we went to Kevlar gloves. I guess that's about it. **Q:** Did you provide respirators to the inmates prior to this time? **A:** No. They wore dust masks.

(Stahley continued) **Q:** Now, so you're correct in pointing out this is a year later after the problems initially started. Between June of 2002 and June of 2003 did you have communication with Mr. Smith about his concerns that the glass breaking operation was not in compliance with OSHA standards? **A:** Did we have conversations, Yes. **Q:** Did Mr. Smith make any disclosures to you that the agency was in violation of federal law, rule, or regulation during this conversation? **A:** He made those statements. **Q:** And did he have any support for his statements? A: From who? I don't understand your question. **Q:** Well, did he present any documentation to you indicating what the violations of law, rule, or regulations were? **A:** Yes. **Q:** and approximately how many discussions did you have with Mr. Smith during that June 2002 to June –? **A:** Almost every day.

(Stahley continued about Novicky) **Q:** Now, just to make sure I have the facts straight, you were requesting Novicky to provide you with authorization to come into compliance with the OSHA regulations, and Mr. Smith was telling you that if the agency did not take steps to come into compliance with the OSHA regulations, they would be in violation? **A:** Yes. **Q:** And did you receive any information in response to this from Mr. Novicky? **A:** No. **Q:** Now, you requested that Mr. Novicky assist you in the glass breaking operation, did you not? **A:** Yes. **Q:** What assistance did you receive from Mr. Novicky? **A:** Little to none. **Q:** And did you receive any written documentation from Mr. Novicky about what assistance he was going to provide to you? **A:** No. **Q:** Okay, you wrote to Mr. Novicky and requested assistance from him, did you not? **A:** Are you making reference to the memo dated July the 16th? **Q:** I'm making reference to all correspondence that you wrote to Mr. Novicky. And it is a fact that you did write and request assistance on July 8th – or July 16th as well as other times, is that a fact? **A:** Yes. **Q:** Did you send Mr. Novicky e-mails requesting assistance? **A:** That one memo. **Q:** And did Mr. Novicky respond in a prompt fashion that he would provide you with assistance? **A:** The Answer is no. **Q:** Did he send you any indication that he was willing to provide you with

assistance that you requested? **A:** No. **Q:** Do you believe that your request for assistance was reasonable under the circumstances? **A:** Yes. **Q:** And how did you feel when you were treated this way by Mr. Novicky? A: Disappointed.
(See Attachments 44, 44a, 44b, 44c, 44d, 44e, 44f, 44g, 44h, & 44i)

The following correspondence dated April 7, 2003, was provided to Mr. Schultz, Mr. Schwalb, Mr. Novicky, Mr. Tussey, and Mr. Clements: Mr. Booth mentioned, I express the concern that an accidental environemtnal release of Cadmium at the booths exhaust system exceeded the Permissible Exposure Limit (PEL), Threshold Level, and Action Level. Mr. Rodriguez, Safety Specialist mentioned one staff member has been tested for lead, cadmium, barium, and beryllium based on the accidental release that occurred on January 21 - 28, 2003. Mr. Stahley mentioned that several requests for a certified mechanical engineer has been made to UNICOR Central Office since July of 2002, which the requests were turned down.
(See Attachments 45, 45a, 45b, 45c, 45d, 45e, & 45f)

The disciplinary action against certain management officials needs to be broadened to the top executive branch. Federal Prison Industries has never been in compliance with OSHA or EPA standards since 1994 through 2005, which I will continue to prove through this response. I believe the lack of action to review OSHA and EPA standards and confer with the National Safety and Health Division before the first Computer Recycling Program came online is not because of lack of knowledge, because Federal Prison Industries has been in business for to many years not to know about compliance standards. This was about a new industry, which would allow Federal Prison Industries startup costs minimal and profit substantial. The Federal Prison Industries, Management Officials, and Executive Officials disregarded the safety and health of staff, inmates, and staff families as well as the environment, which is a criminal offense. This **"LEARN as WE GO"** comment would of been more acceptable in the first three (3) year, not into the eleven (11) year of business.

Allegation 2 Response:

The following facts will demonstrate staff and inmate workers are being exposed to low concentrations or low doses of lead, cadmium, barium, beryllium etc. in the UNICOR factory and outside Warehouse.

Findings Response:

The technical assist visit conducted by Mr. Korbelak, National Industrial Hygienist was very supportive to the low concentration or low doses of exposure to hazardous metals over a period of time. The factory was not disassembling Cathode Ray Tubes for five (5) to eight (8) months. There were not Cathode Ray Tubes (CRT) being disassembled in the factory, except the couple Mr. Korbelak requested. This factory was currently disassembling cable boxes. The factory would normally be disassembling CRT's on all three production lines.

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary

United States Penitentiary
Atwater, California 95301

April 7, 2003

MEMORANDUM FOR PAUL M. SCHULTZ, WARDEN

FROM: **Alan D. Booth, Associate Warden Custody**

SUBJECT: **UNICOR Computer Recycling Program**
Re: Hazardous Metals Concerns

On March 17, 2003, an Occupational and Environmental Health meeting was conducted to address the UNICOR Glass Breaking Operation concerns. The following staff were present during the meeting;

Alan D. Booth, Associate Warden Custody
Thomas W. Stahley, Associate Warden Industries and Education
Phil Rodriguez, Acting Safety Manager
Ricardo Willis, Health Services Administrator
Kellie Bernhardt, Associate Warden's Secretary (Recorder)

Mr. Booth mentioned that new engineering control measures were implemented prior to the Industrial Hygiene Air Monitoring Survey conducted on January 21, 2003 and February 27, 2003. He expressed the concern that an accidental environmental release of Cadmium at the booths exhaust system exceeded the Permissible Exposure Limit (PEL), Threshold Level, and Action Level. He also, mentioned that additional Occupational and Environmental Health work procedures need to be established to ensure UNICOR complies with Bureau Policy and Occupational Safety and Health Act (OSHA) regulatory guidelines.

Mr. Rodriguez mentioned that one staff member has been tested for lead, cadmium, barium, and beryllium based on the accidental release that occurred on January 21 - 28, 2003. He mentioned that these heavy metals are found in the CPU's and Monitors,

which can cause short and long term kidney, liver, nerve, bone, and blood damage. He also mentioned that one UNICOR staff member has requested a OWCP CA-2 Form and is currently being treated by his private physician, which blood test results were 0.1 mcg/L for cadmium. He then mentioned two other UNICOR staff members have requested OWCP CA-2 forms and have been tested, which we are currently awaiting the test results.

Mr. Willis mentioned that inmates working in the glass breaking area and one inmate from the production line received blood and urine testing. He also mentioned in regards to the urine samples taken from inmate workers, testing is compiled from urinating for 24 hours.

Mr. Stahley mentioned the glass breaking booth was shut down on March 14, 2003, until additional engineering controls and environmental air monitoring can be conducted by a certified mechanical engineer. He also mentioned that several requests for a certified mechanical engineer has been made to UNICOR Central Office since July of 2002, which the requests were turned down. He then mentioned Occu-Tech Inc. has conducted five (5) Industrial Hygiene Air Monitoring, which consisted of air sampling at the booths exhaust system, area sampling outside the booth, personal air sampling on inmates inside and outside the booth, area air sampling on the production line, personal air sampling on inmates on the production line, area air sampling at food service, wipe sampling of the work area, and wipe sampling of the inmate workers, personal air monitoring on inmates at the CPU production line, and wipe sampling of the CPU inmate workers. He then mentioned that the Central Office Safety Industrial Hygienist also conducted similar air and wipe sampling and conducted a face velocity and total cfm efficiency of the glass breaking booth ventilation system, which the amount of exposure exceeds twice the level allowed by the OSHA Regulatory Guidelines. Lastly, Mr. Stahley asked for clarification as to whether or not his staff who may have been potentially exposed will be allowed back into the UNICOR Factory or will they be detailed out to another department?

Mr. Booth mentioned that the glass breaking operation will remain temporarily suspended. He also mentioned the strict glass breaking operation procedures already being enforced and re-address previous recommendations that is needed to ensure we are cognizant of our responsibility to protect staff and inmates from any potentially unsafe or unhealthy environmental or occupational exposure in UNICOR.

Although not physically present at the March 17, 2003, initial meeting, comments and recommendation were solicited from Leroy Smith, Safety Manager which were provided and incorporated into the meeting minutes and presented in the following;

1. **GLASS BREAKING OPERATION PROCEDURES:**

A. **MONITOR BREAKING PROCEDURES:**

1. **Operator #1** shall place the monitor onto **Operator's #2** work station.
2. **Operator #1** shall place the adjustable exhaust funnel directly over the electron gun.
3. **Operator #2** shall use a four ounce ball-peen hammer to strategically apply a couple hammer hits to the electron gun.
4. **Operator #1** shall ensure the adjustable exhaust funnel remains over the electron gun and funnel glass for 15 seconds top extract air borne contaminates at the point of operation.
5. **Operator #1** shall remove the electron gun and place it into a separate cardboard box.
6. **Operator #1** shall continue to place the adjustable exhaust funnel over the funnel glass to extract air borne contaminates at the point of operation.
7. **Operator #2** shall use the four ounce ball peen hammer to strategically apply a couple hammer hits to the funnel glass in a rotating motion.
8. **Operator #2** shall remove the heat shield and pass it to **Operator #3** to be smashed, which will be placed into a separate gaylord box.
9. **Operator #2** shall turn over the panel screen away from the operators body to allow the funnel glass to drop directly into the gaylord box.
10. **Operator #2** shall break the panel screen glass and then hand the panel plate to **Operator #4.**
11. **Operator #4** shall use a twelve ounce ball-peen hammer to remove the excess panel screen glass.
12. **Operator #4** shall hand the band to **Operator #5** who shall remove all tab and detachable band.
13. **Operator #5** shall place the tabs into a clean cardboard box.
14. **Operator #5** shall pass the band to **Operator #6** for final de-glassing.
15. **Operator #6** shall remove any excess glass from the band and place the band into a gaylord box.

B. **GLASS REMOVAL AND HANDLING PROCEDURES:**

1. **Operator #7** shall apply a lite spray of water over the glass and dust debris on the ground prior to gently sweeping up large broken glass to one location.
2. **Operator #7** shall pickup the glass gently with a shovel and place the glass gently into Gaylord box.

3. **Operator #7** shall use the HEPA equipped vacuum to clean surfaces of dusts and small debris instead of sweeping.
4. **Operator #7** shall HEPA vacuum the gaylord boxes prior to them being removed from the ventilation booth area.
5. **Operators #8 and #9** shall be responsible for removing all full gaylord boxes containing monitor glass with a pallet jacket to the staging area outside the ventilation booth.
6. **Operators #8 and #9** shall seal the opening of the gaylord box with shrink-wrap to prevent any air contamination during handling and shipping.
7. **Operators #8** shall HEPA vacuum the outside of the gaylord box prior to being removed from the glass breaking area.
8. **Operator #9** shall transfer the gaylord box to the entrance way awaiting for the triage inmates.
9. **Triage inmates** shall transfer the gaylord box to the staging area in the factory.
10. **Triage inmates** shall then place an empty gaylord box at the entrance way awaiting for **Operator #9.**

NOTE: **NO INMATES (I.E., FACTORY INMATES OR TRIAGE INMATES) SHALL ENTER THE GLASS BREAKING AREA. ANY INMATE NOT AUTHORIZED TO BE IN THE GLASS BREAKING AREA SHALL BE AUTOMATICALLY REMOVED FROM UNICOR, WHICH IS IN COMPLIANCE WITH PROGRAM STATEMENT 8120. ALL INMATES PRIOR TO WORKING IN THE GLASS BREAKING OPERATION SHALL BE PROPERLY TRAINED ON ALL COMPUTER MONITOR OPERATING PROCEDURES.**

C. **PERSONAL PROTECTIVE EQUIPMENT:** As a precautionary measure Full Face and Half Face Air Purifying Respirators with HEPA filters shall be offered to staff and inmates upon request. It's not expected that the Action Level or Permissible Exposure Limits will be exceeded. All inmate workers shall pickup their personal protective equipment from the tool room.

D. **WORKERS INSIDE THE VENTILATION BOOTH:**

1. Full Face Air Purifying Respirator with HEPA filters shall be offered to staff and inmate workers. Once staff or inmate workers select to wear the respirator it shall be worn at all times. The Respirator Face Shield shall have a ANSI rating for impact protection.
2. Ear Plugs and Ear Muffs shall be worn by staff and inmate workers.
3. Kevlar work gloves and arm sleeves for all inmate workers.

4. Leather work gloves shall be worn by all inmate workers.
5. Safety shoes or boots shall be worn by staff and inmate workers.
6. Inmate workers shall wear to jump suit during the glass breaking operation.

E. **WORKERS OUTSIDE THE VENTILATION BOOTH:**

1. Half Face Air Purifying Respirator with HEPA filters shall be offered to staff and inmate workers. Once staff or inmates select to wear the respirator it shall be worn at all times.
2. Full Face Shields or Safety Glasses shall be worn by the staff of inmates outside the controlled ventilation booth. The Full Face Shields and Safety Glasses shall have a ANSI rating for impact protection.
3. Ear Plugs shall be worn by staff and inmate workers. Ear Muffs shall be made available upon staff or inmate request.
4. Kevlar Work Gloves and Arm Sleeves shall be worn by all inmate workers.
5. Leather work gloves shall be worn by all inmate workers.
6. Safety shoes or boots shall be worn by all inmate workers.
7. Inmate workers shall wear to jump suit during the glass breaking operation.

F. **HYGIENE PROCEDURES:** Inmate workers shall adhere to the following hygiene procedures during breaks, lunch, and at the end of work shift.

G. **BREAKS AND LUNCH:**

1. All inmate workers shall HEPA Vacuum the top layer jump suit prior to removing it. The dirty jump suit shall be placed into the plastic toter marked dirty prior to exiting the glass breaking area.
2. All inmate workers shall HEPA Vacuum their hands and neck area prior to exiting the glass breaking area.
3. All inmate workers shall wash their hands and facial area with hot soapy water.
4. All inmate workers shall then change into a clean jump suit prior to entering the glass breaking area.

H. **END OF SHIFT:**

1. All inmate workers shall HEPA Vacuum the top and inner layer jump suit prior to removing them. The dirty jump

suits shall be placed into the plastic toter marked dirty prior to exiting the glass breaking area.
2. All inmate workers shall HEPA Vacuum their hands and neck area prior to exiting the glass breaking area.
3. All inmate workers shall wash their hands and facial area with hot soapy water.
4. All inmate workers shall then change into a clean jump suit prior to leaving the factory.

I. **HOUSEKEEPING PROCEDURES**: The Glass Breaking Area shall be thoroughly cleaned by all inmate workers daily.

1. Apply a lite spray of water over the glass and dust debris on the ground prior to gently sweeping up large broken glass to one location.
2. Shall pickup the glass gently with a shovel and place the glass gently into Gaylord box.
3. Shall use the HEPA vacuum to clean surfaces of dusts and small debris instead of sweeping.
4. Shall use wet towels to clean non floor surfaces and place towels in a plastic disposable bag and store it in the non-regulated waste containers at the satellite storage site.
5. All white primary filters inside the ventilation system shall be vacuumed to remove excess contaminates. **(RESPIRATORS REQUIRED)**
6. When the HEPA vacuum becomes full, all debris shall be placed in a plastic disposable bag and stored in the non-regulated waste containers at the satellite storage site.
7. Respirators shall be washed, sanitized, and stored in clean lock tight plastic bags and stored in the tool room.
8. Two HEPA Vacuums shall be in the glass breaking area at all times.
9. No Food or Drink shall be allowed in the glass breaking area.

2. **Previous Recommendations**:

A. Contract a Mechanical Engineer to review and recommend additional engineering methodologies/principles.
B. Establish initial baseline blood and urine tests for UNICOR staff and affected inmate workers.
C. Establish annual blood and urine tests for UNICOR staff and affected inmate workers.
D. Establish medical monitoring for staff and inmates workers.
E. Establish personal air monitoring every 3 months for lead and every 6 months for cadmium.
F. Establish provisions for hygiene facilities; (i.e., dirty change out room, showers, and clean change out room).

G. Install an exhaust warning alarm for notification if lead, cadmium, barium, or beryllium levels are exceeding the OSHA regulatory PEL, TLV, or Action levels.
H. Exhaust the booths air outside the UNICOR Factory with approved filtering system to met or exceed the California and Federal OSHA Regulatory Guidelines.
I. Continue testing in accordance with the "National Institute for Occupational Safety and Health (NIOSH) Manual of Analytical Methods and American Industrial Hygiene Association (AIHA) accredited laboratory.

Mr. Booth mentioned the importance of continuing to enforce good operating procedures, respiratory protection, personal hygiene, medical monitoring and periodic blood/urine testing. He also mentioned the importance of meeting the new recommendations, which will allow the UNICOR Factory to remain in compliance with OSHA and Bureau guidelines, which will ensure the safety and health of our staff and inmate workers.

With no further discussion, the meeting was adjourned at 2:15 p.m.

cc: Steve Schwalb, Assistant Director Industries, Education and Vocational Division, Central Office
Larry Noviky, UNICOR Recycling Division
Steve Tussey, National Safety Administrator
Dave Clements, Regional Safety Administrator
Safety Manager, USP Atwater
Local Union
File

the screws.

Q. And who does the work of disassembling the products?

A. The inmates.

Q. Is there a training program for the inmates?

A. Yes.

Q. And what subjects are taught in that program?

A. How to recognize certain commodities that have more value than others. Like if it's a memory

stick, it's a 60-gigabyte versus something else or if it's -- copper wiring might be worth more if it's still on the yoke of the computer, that kind of thing. So that's what we train them to do, to understand the value of the commodities.

Q. And how long is the training program?

A. It's OJT.

Q. And by that you mean on-the-job training?

A. Sure. Uh-huh. Because it's a continuation because the market changes daily. Copper could be worth something today and it may not be tomorrow.

Q. Are the inmates given any health and safety instructions?

A. They get safety talks weekly.

Q. What is given to the inmates in terms of

protective devices?
A. We give them gloves, eye protection, ear protection. And I'm sorry, and we also give them jumpsuits.
Q. And has there been any controversy raised about the protective gear?
A. I don't understand controversy. What --
Q. Have the procedures for what type of protective gear are given to the inmates, have they

changed over the time that you've worked at Atwater?
A. Depends on what department you're talking about because there's a glass operation, too, that's completely different than regular production line. So the standard of protective equipment are totally different. So if you're asking me if the protective equipment in the glass operation has increased, then the answer is yes.
Q. And how has it increased?
A. We went to full face, we went to Tyvek suits, we went to Kevlar gloves. I guess that's about it.
Q. Now, I want to move into a slightly different area. How do you communicate with other individuals in the Bureau of Prisons system?
A. Most of it we've moved to Groupwise, electronic.
Q. And what software do you use?

Attachment # 44a

25 The filter test just identified those items. Now,

1 the specific date that we went back to work, I don't
2 have that, but I do know that it was prior to July
3 the 24th when Occutech came in to do the actual
4 filter test, the body test, the wipe test, the air
5 composite test. That was done on July the 24th.
6 Q. Was there any testing done in June to
7 your knowledge?
8 A. I would say that was the filter banks
9 that were done.
10 Q. Was that on June 20th?
11 A. I believe so. Somewhere around June and
12 I think then we got those test results back and then
13 I think that's when we suspended the operation, in
14 July, July 1st.
15 Q. Did you provide respirators to the
16 inmates prior to this time?
17 A. No. They wore dust masks. And once
18 Mr. Smith indicated to us that we had problems, he
19 recommended a company called Jergens and Associates,
20 because I didn't know who these people were either,
21 and I guess Mr. Smith had firsthand knowledge of this
22 company out of Fresno.
23 So on July the 22nd, under the OSHA
24 guideline 1910-134, we recommended that we would
25 approve an outside company to come in and do the fit

Attachment 4446

prior to that. So, yes, it becomes an issue of money, but you got to understand I was not the authorizing official for that amount of money.

Q. Who was the authorized official?

A. That comes out of central office. Now, I

don't know the actual person that has to sign that, but any time it reaches a certain threshold of $2500, I am not authorized to spend that money. I have to send that to Washington, D.C., for approval. So it's not by my hand that would approve that. I would not approve that because that's above my authority.

Q. Now, did you get any input from any other Bureau of Prison employee recommending the SAIC proposal?

A. No, not that I'm aware of.

Q. Did you receive e-mail from Alan Booth concurring with Mr. Smith's proposal?

A. Oh, yes.

Q. And did you see any evidence that Mr. Booth's proposal was not reasonable other than the cost factor?

A. No.

Q. Now, so you're correct in pointing out this is a year later after the problems initially started. Between June of 2002 and June of 2003 did you have communications with Mr. Smith about his concerns that the glass breaking operation was not in

Attachment #44C

compliance with OSHA standards?

A. Did we have conversations, yes.

Q. Did Mr. Smith make any disclosures to you

that the agency was in violation of federal law, rule or regulation during those conversations?

A. He made those statements.

Q. And did he have any support for his statements?

A. From who? I don't understand your question. Support from --

Q. Well, did he present any documentation to you indicating what the violations of law, rule or regulation were?

A. Yes.

Q. And approximately how many discussions did you have with Smith during that June 2002 to June --

A. Almost every day.

Q. And can you describe what occurred during those discussions?

A. We worked side by side, his input to help us, his ideas, my ideas to refit the booth so we could retest. And as you can see, we retested all through the year. So his support also gave us our driving force to help us. He recommended things, he would come down and do -- we would put fans in, we would add this, we would add that. He would do some

Attachment # 44

Q. Okay. Well, what was the reason why you put this memo out on July 16th, 2002?

A. Because I recognized that this was beyond

my expertise to resolve the issues concerning Mr. Smith's concerns. I am not a chemist so I wasn't able to make any decision here that would get us in compliance.

Q. Now, just to make sure I have the facts straight, you were requesting Novicky to provide you with authorization to come into compliance with the OSHA regulations, and Mr. Smith was telling you that if the agency did not take steps to come into compliance with the OSHA regulations, they would be in violation.

A. Yes.

Q. And so you wrote this memo, Exhibit 6, on July 16th, 2002 to inform Mr. Novicky that they needed to take some steps to provide you with the support to deal with the issues that were being raised by Mr. Smith?

A. Yes.

Q. And did you receive any information in response to this from Mr. Novicky?

A. No.

Q. Was Mr. Novicky taking any steps to prevent you from testing the glass breaking operation during this period of time June and July 2002?

A. No.
Q. And if such a incident did occur, would you be likely to remember that as you sit here today?
A. I would remember, but it didn't happen.
Q. Now, you recall going on an ACA walk-through with Mr. Smith on one or more occasions?
A. I only remember one that I'm aware of.
Q. And do you recall when that was?
A. No, I do not.

Q. Do you recall touching him during that walk-through?
A. That did not happen.
Q. Were you questioned regarding any personal contact, physical contact with Mr. Smith by anyone at the Bureau of Prisons at any point?
A. The answer is no.
Q. Now, other than the e-mail that we discussed where Mr. Novicky directed or stated that he did not want any more testing, was there any other communication from Mr. Novicky regarding Mr. Smith's OSHA disclosures?
A. Not at my level, no.
Q. Do you recall receiving any other communication accusing Mr. Smith of being unprofessional by Mr. Novicky?
A. No.
Q. Now, you requested that Mr. Novicky

assist you in the glass breaking operation, did you not?

A. Yes.

Q. What assistance did you receive from Mr. Novicky?

A. Little to none.

Q. And did you receive any written

documentation from Mr. Novicky about what assistance he was going to provide to you?

A. No.

Q. Now, did Mr. Novicky ever ignore a written request for assistance from you?

MS. NAVARRO: I'm going to object to the phrasing of the question in that I believe that this witness can only answer from his knowledge. He doesn't -- I don't know that he can answer for Mr. Novicky.

BY MS. DRYOVAGE:

Q. He's not asked that. I'll repeat the question. The question was did you receive any ignoring of a written request? Do you understand the question?

A. I haven't received anything in writing. I don't understand your question is what I'm saying.

Q. Okay. You wrote to Mr. Novicky and requested assistance from him, did you not?

A. Are you making reference to the memo

dated July the 16th?

Q. I'm making reference to all correspondence that you wrote to Mr. Novicky. And it is a fact that you did write and request assistance on July 8th -- or July 16th as well as other times;

is that a fact?

A. Yes.

Q. And did you receive a prompt response that gave you an indication that he was willing to provide you with the assistance that you were seeking?

A. No.

Q. Did you send Mr. Novicky e-mails requesting assistance?

A. That one memo.

Q. And did Mr. Novicky respond in a prompt fashion that he would provide you with assistance?

A. The answer is no.

Q. Did he send you any indication that he was willing to provide you with assistance that you requested?

A. No.

Q. Do you believe that your request for assistance was reasonable under the circumstances?

A. Yes.

Q. Did you take any steps after not receiving a response or assistance from Mr. Novicky

to try to get someone in the agency to get him to give you what you needed?

A. No.

Q. And how did you feel when you were treated this way by Mr. Novicky?

A. Disappointed.

Q. The July 16th memo to Mr. Novicky, did you discuss that with Mr. Smith?

A. No.

Q. Do you recall informing Mr. Smith that you were going to tell Mr. Novicky that you needed assistance?

A. Yes, but I didn't share that memo with him, no.

Q. But you shared with him the fact that you were going to request the assistance in writing?

A. That's correct.

Q. And did you share with Mr. Smith the fact that you were going to document your request for assistance in writing to cover yourself in case they tried to blame these problems on you?

A. If you're asking me if you think I CYA'd, that is not why I did that. I did that memo because I needed help because I did not know what to do.

Q. Well, I'm just asking whether or not --

A. You're asking me if my motive is to cover myself, and that's not what I did.

A few views of the managed work areas.

Photo 1

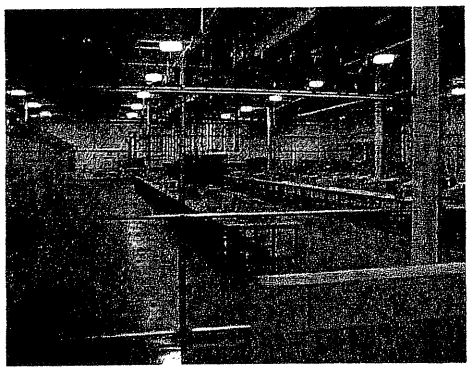


Photo 2

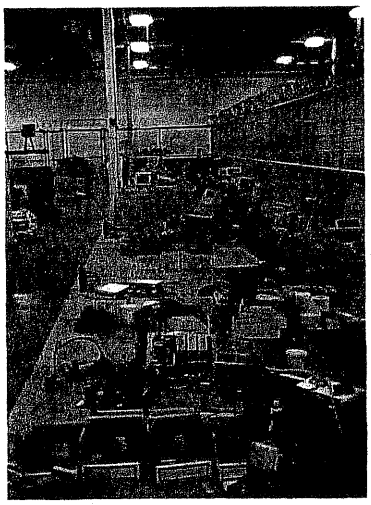
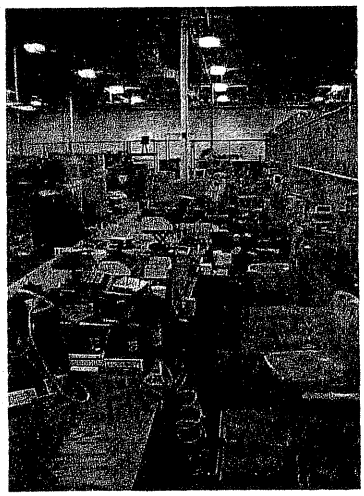


Photo 3



The test result would show air monitoring results were below the OSHA action level or permissible limit when CRT's are not being disassembled. Mr. Korbelak mentioned that to Mr. Schultz and I before he began sampling. The wipe sampling is used to determine harmful dust on work surfaces, floors, walls, equipment, worker's hands and face. The wipe sampling is used during an EPA exposure or metal risk assessment and OSHA 1910.132 Subpart I, Appendix B for harmful dust. All the wipe sampling conducted on workers hands from July 2002 through September 2004 in the factory and glass breaking operation was very high levels or barium, beryllium, lead, and cadmium.

Federal Prison Industries (FPI) and United States Penitentiary, Atwater had a meeting to discuss the need to provided blood and urine testing to inmates working the disassembling areas, shipping, receiving, and handling at the UNICOR factory and outside Warehouse this was conducted on August 4, 2004. I informed Ms. Keidel, that I wasn't addressing we exceeded the OSHA Al or PEL for lead and cadmium, what I am addressing is the short and long term of low concentrations of lead and cadmium exposure to inmate workers. Mr. V. Smith states, it's no different then you or I being exposed to fumes while pumping gas. Ms. Keidel states, I agree, it's like being exposed to second hand smoke! I informed Ms. Keidel and Mr. V. Smith, that each of your scenarios are different, but just as unsafe and unhealthy. I then informed Ms. Keidel and

Mr. V. Smith, that low concentrations of gas fumes and second hand smoke has been proven to cause serious health concerns or death, which OSHA clearly identifies low concentrations to lead or cadmium may cause serious health concerns as well. I then asked Ms. Keidel and Mr. V. Smith, that it's acceptable to allow inmates to ingest, absorb, or inhale low concentrations of lead or cadmium over a short or long period of time when CRT's are broken at the work stations and separation points and we are not required to do anything as long as we don't exceed the OSHA action level or permissible exposure limit, which this is acceptable practice by OSHA and UNICOR Bureau-Wide? Ms. Keidel and Mr. V. Smith both replied, Yes, this is acceptable. **(See Attachments 46, 46a, 46b, 46c, & 46d)**

OSHA hasn't provided any air sample or wipe sample results to review. OSHA did make it clear the wipe samples did detect low concentrations of hazardous metals. Now the glass breaking area had been closed five (5) to eight (8) months before Mr. Korbelak's technical assist and twelve (12) months before OSHA's inspection. Plus, OSHA gave the agency a two week notice prior to them entering the institution to conduct the inspection, which the agency shut down the factory and clean the factory, glass breaking operation, and warehouse for two weeks. The Institution even moved three (3) to four (4) tractor trailer loads of CRT's and Televison out of the factory and warehouse.

Conclusion Response:

The wipe samples conducted by Mr. Korbelak in September 2004, showed the following: highest wipe sampling levels for barium, beryllium, and lead, were found on the table tops in the disassembling areas (Production Lines). The highest wipe sampling levels for cadmium were found on the top of unbroken monitor (screen side up) at the top of a palletized stack of monitors stored in the disassembling area (Production Line 2). Wipe samples from worker's hands were often below the limit of detection with some showing low levels of barium and lead. The only hand sample with cadmium was in disassembling area (Production Line 3).

On May 9, 2005, samples were taken of the swamp cooler filters on the UNICOR factory roof. These swamp coolers are approximately twenty-five (25) feet above the disassembling areas (Production Lines) and produce approximately 260 filters annually to be replaced and through into the general waste stream, into the local county dumps.

NOTE: The test conducted was RCRA 13 Test Pollutant Metals and the NIOSH standards for Pollutant Metals, which showed the following metals above the regulatory limits: **1.** Metals-Antimony Concentrations 9.1 mg.kg to Regulatory Limit 5.0, **2.** Metals-Arsenic Concentrations 5.3 mg/kg to Regulatory Limit 2.0, **3.** Metals-Cadmium Concentrations 2.6 mg/kg to Regulatory Limit 1.0, **4.** Metals-Chromium Concentrations 35 mg/kg to Regulatory Limit 2.5, **5.** Metals-Copper Concentrations 120 mg/kg to Regulatory Limit 5.0, **6.** Metals-Lead Concentrations 52 mg/kg to Regulatory Limit 2.5, **7.** Metals-Nickel 28 mg/kg to Regulatory Limit 5.0, **8.** Metals-Zinic Concentrations 2200 mg/kg to Regulatory Limit 5.0, and **9.** Metals-Mercury Concentrations 0.51 to Regulatory Limit .01. **(See Attachments 47, 47a, 47b, 47c, & 47d)**

August 4, 2004

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: L. A. Smith, Safety Manager

SUBJECT: Meeting with Mr. Gonzalez, Ms. Aragon, Cynthia Keidel, Varney Smith

On August 4, 2004, approximately 9:00 a.m., I received a call from Mr. Gonzalez, Executive Assistant, which he requested that I meet him in his office in fifteen minutes to hold our meeting pertaining to UNICOR.

I asked Mr. Gonzalez, why is the meeting being moved up so soon?

Mr. Gonzalez replied, that Ms. Aragon wouldn't be available Thursday and neither would he.

I informed Mr. Gonzalez, that I would meet him at his office shortly.

Mr. Rodriguez and I walked upon Mr. Gonzalez in the corridor outside the Warden Office.

Mr. Gonzalez asked, why is Mr. Rodriguez here?

I informed Mr. Gonzalez, that Mr. Rodriguez has always participated in all UNICOR meetings and has been instrumental in the implementation of all environmental control measures affecting the UNICOR Glass Breaking Operation.

Mr. Gonzalez then stated, I don't want him (Mr. Rodriguez) to participate in this meeting, I only want you here.

I then asked Mr. Gonzalez, is there a particular reason why Mr. Rodriguez can't be part of this meeting?

Mr. Gonzalez then stated, because I don't need him at this meeting, I only requested for you!

I then informed Mr. Gonzalez, that I mentioned Mr. Rodriguez attending this meeting on my return e-mail to him, which he opened and didn't express any concerns of Mr. Rodriguez attending this meeting over the phone earlier.

Mr. Gonzalez then stated, I don't have to explain myself! Mr. Gonzalez and I then proceeded to enter his office, when he asked me to set down. Ms. Aragon was already in Mr. Gonzalez office at the time we arrived.

Attachment #46

Mr. Gonzalez then began to dial a phone number on his office phone.

I asked Mr. Gonzalez, who are you calling?

Mr. Gonzalez replied, I am calling UNICOR in the Central Office.

I then asked Mr. Gonzalez, I thought this meeting was suppose to between yourself, Ms. Aragon, and I?

Mr. Gonzalez then stated, don't worry about it Leroy!

I then informed Mr. Gonzalez, that Warden Schultz informed me yesterday that this meeting would be held between us only and we were to keep this in-house and that Central Office was not to be involved.

Mr. Gonzalez then stated, don't worry about it Leroy!, I have spoken with Warden Schultz and he approved this meeting with the Cental Office. Mr. Gonzalez then stated, you need to set down and keep quite!

Ms. Keidel, Cynthia, Environmental Program Manager Central Office, answered the phone and Mr. Gonzalez introduced everyone in his office. Ms. Keidel appeared to be on the phone by herself.

Mr. Gonzalez asked Ms. Keidel, if there were any concerns about the recent memorandum they received by Leroy Smith?

Ms. Keidel replied, Yes. Ms. Keidel stated, I would like to make clear that the last time Mr. Smith and I spoke during my visit to USP Atwater, I informed him that he was to notify me first about any safety or health concerns pertaining to UNICOR's Recycling Program. Ms. Keidel then asked, isn't that right Leroy?

Mr. Gonzalez then asked, is that true Leroy?

I informed Ms. Keidel and Mr. Gonzalez, that we never talked about that, but we did talk about the work already done at USP Atwater and work needing to still be done to ensure the safety and health of staff and inmate workers.

I then asked Ms. Aragon, do you remember Ms. Keidel asking me to inform her of any UNICOR safety concerns? I then informed everyone, the reason why I am asking Ms. Aragon this question is because I never spoke with Ms. Keidel without Ms. Aragon present.

Ms. Aragon replied, I can't recall because it's been awhile.

Ms. Keidel then stated, I have read Mr. Smith memorandum and I can't believe what I have read, matter of fact this memorandum disturbs me! Ms. Keidel then stated, and the second memorandum I received clearly makes things more confusing then the first!

Attachment #46

Ms. Keidel then stated, I have also provided a copy of this memorandum to Mr. Lee, John, Central Office Safety. Ms. Keidel then asks, have you all seen Mr. Lee's memorandum in response to Mr. Smith allegations? Ms. Keidel then begins to read Mr. Lee's memorandum response over the phone. After reading Mr. Lee's memorandum, Ms. Keidel states, Mr. Lee totally disagrees with Mr. Smith's findings.

I inform Ms. Keidel, that part of Mr. Lee's response totally agrees with my fact finding and corrective action measures. I then informed Ms. Keidel, that Mr. Lee's response is comparing apples to oranges, which he is clearly off the mark in what he has responded too. I also informed Ms. Keidel, that I never mentioned in my memorandum that we were exceeding the OSHA Action Levels or Permissible Exposure Limits (PEL) for Lead or Cadmium, what I am addressing is the short or long term of low concentrations of lead or cadmium exposure to inmate workers.

Ms. Keidel then asks, correct me if I am wrong, but I believe that USP Atwater glass breaking operation meets all OSHA guidelines? Ms. Keidel then states, if we are not above the OSHA Action or PEL there is nothing we need to due Mr. Smith!

I informed Ms. Keidel, that I don't disagree that the glass breaking operation is meeting OSHA guidelines. I then informed Ms. Keidel, that we should take initial blood and urine test of each inmate to establish a base line, which will protect Federal Prison Industries and Bureau of Prisons.

Ms. Keidel then states, I don't agree with you Mr. Smith (Leroy).

I then informed Ms. Keidel, UNICOR Central Office and Safety Central Office has disagreed with me about the safety and environmental health concerns associated with the glass breaking operation for over three years, why would this be any different.

I also informed Ms. Keidel, that it appears that Mr. Lee and herself have interrupted my memorandum in correctly, because I address the CRT disassembling work stations and CRT separation points for low concentration of lead and cadmium exposure over a period of time. I also informed Ms. Keidel, that when the CRT's are broken the debris needs to be handled as a hazardous spill.

A second voice then speaks out. Then second voice states, the broken CRT's are not classified as hazardous waste, but universal waste.

I then ask, is that Mr. Lee?

Ms. Keidel replies, No., that's Varney Smith Leroy.

I then inform Ms. Keidel and Mr. Smith, Varney, that I never classified the CRT debris as hazardous waste, but I did identify the CRT debris as a hazardous waste spill for proper clean-up, which will meet the EPA guidelines.

Mr. Smith, Varney then states, you can sweep the CRT debris up and dispose of it with the rest of the CRT glass.

Ms. Keidel then states, your wrong Mr. Smith (Leroy), the EPA has clearly classified the CRT's as Universal Waste, not Hazardous Waste, as long as it's being processed in the factory.

I then informed Mr. Smith, Varney, that we must follow proper protocol set forth by UNICOR's own CRT Procedures and follow Mr. Lee's guidance using a wetting agent, HEPA Vacuum, and proper personal protection.

Ms. Keidel replies, that's correct! Ms. Keidel then asks Ms. Aragon, we are following our procedures on cleaning up broken CRT's?

Ms. Aragon replied, we haven't been, but I gave additional training t

I informed Ms. Keidel and Mr. Smith, Varney, Universal Waste classification is for shipping, handling, and disposal purposes, after the CRT's have been broken and packaged in the glass breaking operation. I then informed Ms. Keidel and Mr. Smith, Varney, when CRT's are being disassembled at the work station or separation points and the CRT's break on the table or on ground this is classified as a hazardous waste spill, cadmium gas, lead, barium, and beryllium are released into the air at low concentrations exposing inmate workers.

Mr. Smith, Varney then states, it's no different then you or I being exposed to fumes while pumping gas!

Ms. Keidel then states, I agree, it's like being exposed to second hand smoke!

I informed Ms. Keidel and Mr. Smith, Varney, that each one of your scenarios are different, but just as unsafe or unhealthy. I then informed Ms. Keidel and Mr. Smith, Varney, that low concentrations of gas fumes and second hand smoke has been proven to cause serious health concerns or death, which OSHA clearly identifies low concentrations to lead and cadmium may cause serious health concerns as well.

Ms. Keidel then asks Ms. Aragon, when I was at USP Atwater there were no CRT's reported to have been broken during my visit?

Ms. Aragon replies, No, there has been CRT's broken periodically throughout the factory.

Ms. Aragon then asked Ms. Keidel, let me get something straight, I can have any inmate in the factory cleanup the CRT debris as long as we follow UNICOR's procedures and it doesn't have to be an inmate from the glass breaking operation?

Ms. Keidel replies, that's correct, just make sure the inmate follows the proper procedures.

I then asked Ms. Keidel, that you are authorizing and allowing any inmate worker with out being medically cleared or receiving an initial blood or urine test to cleanup CRT debris, which contains lead, cadmium, barium, and beryllium?

Ms. Keidel and Mr. Smith, Varney replied, Yes!

I then ask Ms. Keidel, you don't think this will allow us to be venerable to inmate litigation.

Ms. Aragon then states, inmates volunteer to work in UNICOR, if feel unsafe they can also quite.

I then informed Ms. Keidel, Ms. Aragon, Mr. Smith, Varney, and Mr. Gonzalez, like some inmates that have brought up safety concerns in the past and have been removed from their jobs and placed on orderly duty or fired.

Ms. Aragon replied, I don't know anything about that.

I then asked Ms. Keidel and Mr. Smith, Varney, that it's acceptable to allow inmates to ingest, absorb, or inhale low concentrations of lead and cadmium over a short or long period of time when CRT's are broken at the work stations and separation points and we are not required to do anything as long as we don't exceed the OSHA Action Level or Permissible Exposure Limit, which this is acceptable practice by OSHA and UNICOR Bureau wide.

Ms. Keidel and Mr. Smith, Varney both replied, Yes, this is acceptable.

Mr. Smith, Varney then states, we have no reason to believe we have exceeded the OSHA Action Level or PEL without additional testing, which would cause us to take any further action.

I then informed Ms. Keidel and Mr. Smith, Varney, that I just wanted verification that inmate exposure to low concentration of lead and cadmium over a period of time is acceptable practice by UNICOR and you both answered that for me.

Ms. Keidel then stated, I think there has been a lot discussed during this meeting, which we will need to take under advisement. Ms. Keidel then stated, we will need to setup another meeting next week.

Mr. Gonzalez replies, let us know and we will be available.

EMSL

EMSL Analytical, Inc.

Chemistry Laboratory
3 Cooper Street
Westmont, NJ 08108
Phone (856) 858-4800
Fax (856) 858-4571

Fax Cover Sheet

TO: Leroy Smith

COMPANY: US Fed Bureau of Prisons

FAX#: 209-358-4011

FROM: Mary E Pierce
9AM EST

DATE: 8/15/05

Number of pages including cover sheet: 6pg

Message: Copy of report requested: 8/12/05
010502282

Thank you

EMSL Analytical

http://www.emsl.com

3 Cooper St.
Westmont, NJ 08108
Phone: (856) 858-4800
Fax: (856) 858-4571

Attn: **Phil Rodriquez**
Federal Bureau Of Prisons
#1 Federal Way
Atwater, CA 95301

Phone (209) 386-4812
Fax (209) 386-4695

6/28/05

The following report covers the analysis performed on samples submitted to EMSL Analytical on 6/17/05. The results are tabulated on the attached data pages for the following client designated project:

Project ID: Unicor Roof Vent

The reference number for these samples is EMSL Order #010502282. Please use this reference when calling about these samples.

If you have any questions, please do not hesitate to contact me at (856) 858-4800.

Reviewed and Approved By:

Laboratory Director or other approved signatory
NJ-NELAP Accredited:04653

ACCREDITED IN ACCORDANCE WITH

The test results contained within this report meet the requirements of NELAC and/or the specific certification program that is applicable, unless otherwise noted

Attachment 647a

EMSL Analytical
1 Cooper St., Westmont, NJ 08108
Phone: (856) 858-4800 Fax: (856) 858-4571 Email: sweeson@emsl.com

Attn: **Phil Rodriquez**
Federal Bureau Of Prisons
#1 Federal Way
Atwater, CA 95301
Fax: (209) 386-4695 Phone: (209) 386-4812

Customer ID: FBOP62
Customer PO: App Code #080833
Received: 06/17/05 9:50 AM
EMSL Order: 010502282
EMSL Proj: Unicor Roof Vent
Report Date: 6/28/05

Client Sample Description 1
Unicor Roof Vent
Collected: 6/9/05 11:00:00 AM
Lab ID: 0001

Test	*Method*	*Parameter*	*Concentration*	*Units*	*RL*	*Analysis Date/Time*	*Analyst*
Priority Pollutant Metals-Antimony, Total	6010B	Antimony	9.1	mg/Kg	5.0	6/20/05 07:28 PM	SHansen
Priority Pollutant Metals-Arsenic, Total	6010B	Arsenic	5.3	mg/Kg	2.0	6/20/05 07:28 PM	SHansen
Priority Pollutant Metals-Beryllium, Total	6010B	Beryllium	<1.0	mg/Kg	1.0	6/20/05 07:28 PM	SHansen
Priority Pollutant Metals-Cadmium, Total	6010B	Cadmium	2.6	mg/Kg	1.0	6/20/05 07:28 PM	SHansen
Priority Pollutant Metals-Chromium, Total	6010B	Chromium	35	mg/Kg	2.5	6/20/05 07:28 PM	SHansen
Priority Pollutant Metals-Copper, Total	6010B	Copper	120	mg/Kg	5.0	6/20/05 07:28 PM	SHansen
Priority Pollutant Metals-Lead, Total	6010B	Lead	52	mg/Kg	2.5	6/20/05 07:28 PM	SHansen
Priority Pollutant Metals-Nickel, Total	6010B	Nickel	28	mg/Kg	5.0	6/20/05 07:28 PM	SHansen
Priority Pollutant Metals-Selenium, Total	6010B	Selenium	<5.0	mg/Kg	5.0	6/20/05 07:28 PM	SHansen
Priority Pollutant Metals-Silver, Total	6010B	Silver	<2.5	mg/Kg	2.5	6/20/05 07:28 PM	SHansen
Priority Pollutant Metals-Thallium, Total	6010B	Thallium	<2.5	mg/Kg	2.5	6/20/05 07:28 PM	SHansen
Priority Pollutant Metals-Zinc, Total	6010B	Zinc	2200	mg/Kg	5.0	6/20/05 07:28 PM	SHansen
Priority Pollutant Metals-Mercury, Total	7471A	Mercury	0.61	mg/Kg	0.1	6/21/05 12:59 PM	mschaeffer

NIOSH - http://www.cdc.gov/niosh/npg/npgdname.html

Attachment #476

tolf BoP

(1 of 2)

EMSL Analytical, Inc. Chemistry Lab 3 Cooper St., Westmont, NJ 08108 TEL: (856) 858-4800 FAX: (856) 858-4571	Chain of Custody / Analysis Request Form Print ALL Information. Put N/A in blanks not applicable	EMSL Project # 010502282 Account Rep: Daniel B. Kocher (888) 455-3675 Indicate State where samples collected:
REPORT RESULTS TO:	**SEND INVOICE TO: EMSL**	**TURNAROUND TIME**
Name: Phil Rodriguez	Name: EMSL PO#:	Date Results needed by:
Company: Federal Bureau Of Prisons	Company Chemistry Department	*Standard 6-10 days or 2 weeks X *11-15 days or 3 weeks☐ *16-21 days or 4 weeks ☐
Address #1 Federal Way	Address 3 Cooper Street	The following turnaround times require lab approval:
City Atwater	City Westmont	☐ *4-5 days or 1week ☐ 72 Hrs ☐48 Hrs
State Ca ZIP 95301	State New Jersey ZIP 08108	☐ 24 Hrs Approved by
TEL: 209-386-4812 FAX: 209-386-4695	TEL:888-455-3675 FAX: 408-934-7015	*same price and tat for weeks or days
Sampled by: (Signature)	# of Samples in Shipment: 1	Date of Sample Shipment:

Failure to complete shaded areas will hinder processing of samples.	MATRIX	Method Preserved	Sampling	List Test Needed

010522282 (242

	Sample Number	Station Location /Sample ID	COMP	GRAB	WATER	SOIL	AIR	SLUDGE	OTHER	HCL	HNO3	H2SO4	ICE	OTHER	DATE	TIME							
1.	1	UNICOR ROOF VENT												X	6/9/05	11:00 AM							
2.																							
3.																							
4.																							
5.																							
6.																							
7.																							
8.																							
9.																							
10.																							

Released By Signature	Date & Time Released	Delivery Method	Received By Signature	Agency	Date & Time Received	Condition Noted
[signature]	6-1-05 2:10	FED EX	[signature]	[signature]	6/17/05 9:50 am	84°F NO ICE

Comments: RCRA 13 Test

Note Credit Card Purchase only

Please indicate reporting requirements: ☐1. Results Only ☐2. Results and QC ☐3. Reduced Deliverables ☐4. Disk Deliverable

EMSL

The increase and decreases of lead and barium in the inmate workers blood levels annually demonstrate that even being well protected the inmates are being exposed to low concentrations of lead, and barium over an accumulative period of time. There blood levels have shown an increase of lead and barium from 2002 through 2004 test results. This is an example of inmate workers blood sample results on September 9, 2002 and again on March 19, 2003, which work in the glass breaking operation: 1. Lead from 2002, 2003, 1. <2 to 5, 2. <2 to 2, and 3. <2 to 4 and for Barium in 2002 and 2003 - 1. 60 to 110, 2. 83 to 150, and 3. 59 to 120.

According to Toxicology, OSHA, EPA, and NIOSH the exposure routes are through inhalation, ingestion, skin, and the eyes. Cadmium, lead, and barium may cause local irritation of the eyes, nose, throat, bronchial tubes, skin, kidney damage, increased risk of cancer of the lung, brain damage, neurological damage, bone damage, muscle damage, and prostate cancer at low concentrations or low doses. Here's two examples: 1. OSHA 29 CFR 1910.1025 Lead (Hazard Data) - A. The standard is intended to protect you not only from the immediate toxic effects of lead, but also from the serious toxic effects that may not become apparent until years of exposure have passed. B. There is no sharp dividing line between rapidly developing acute effects of lead, and chronic effects which take longer to acquire. Lead adversely affects numerous body systems, and causes forms of health impairment and disease which arise after periods of exposure as short as days or as long as several years. 2. OSHA 29 CFR 1910.1027 Cadmium (Hazard Data) - A. Cadmium can cause local skin or eye irritation. B. Repeated or long-term exposure to cadmium, even at relatively low concentration, may result in kidney damage and an increased risk of cancer of the lung and of the prostate. 3. Once staff or inmate workers have been removed from the exposure to lead, cadmium, barium, and beryllium a large part of the hazardous metals are extracted through urine and feces. This still allows a large portion of the hazardous metals to attach themselves to bone, kidney, liver, muscle tissue, and other body organs, which repeated exposure will form larger concentrations or larger doses in these areas that will cause health concerns over a period of time, like Asbestos.

On approximately December 8, 2004, I told Mr. Lee during the Office of Internal Affairs interview that were exposing our staff and inmates to low concentrations of hazardous metals, which the recent wipe samples confirm. I then asked Mr. Lee, are you aware that OSHA Appendix A states, that low concentrations will still cause health concerns. Mr. Lee replied, Yes. I then asked Mr. Lee, are you telling me that we can knowingly expose our staff and inmates to low concentrations of hazardous metals and that's acceptable? Mr. Lee told me, No I am not saying that's acceptable. I then told Mr. Lee, then why does Ms. Keidel and Mr. V. Smith state that's the information and stance they received directly from you. Mr. Lee told me, I have never informed Ms. Keidel or Mr. V. Smith of that! **(See Attachments 48, & 48a Affidavit)**

I think Mr. Korbelak said it eloquently, though hand samples were among the lowest levels sampled, surfaces with the higher levels of metals could pose a cross-contamination exposure potential to workers through ingestion.

Listing of Actual/Apparent Violations: The list below is the violation of Law, Rule, or Regulation, Specific Danger to Public Health or Safety, Abuse of Authority at the Federal Prison

OATH

I declare, under the pain and penalty of perjury, that the foregoing statement consisting of 6 page(s) is true and accurate to the best of my knowledge and belief.

AFFIANT

Subscribed and sworn to before me this 10th day of December, 2004

Authorized by 5 U.S.C. 303
to Administer Oaths

Scott Hourigan, Special Agent
Federal Bureau of Prisons
Office of Internal Affairs

This is an addendum to my Affadavit of 23 pages on December 9, 2004, which I was advised by the OIG investigators that I could do if I thought of anything else that would be helpful.

Section 62. I told Mr. Lee during the interview that were exposing our staff and Inmates to low concentrations of Hazardous metals, which the recent wipe samples confirm. I then asked Mr. Lee are you aware that OSHA Appendix states the Low concentrations will still cause Health Concens. Mr. Lee replied, yes. I then asked Mr. Lee are you telling me that we can knowingly expose our staff and Inmates to low concentrations of hazardous metals and that's acceptable? Mr. Lee told me no I am not saying that's exceptable. I then told Mr. Lee then why does Mr. Kiedel and Mr. Varney Smith ~~state~~ that the information and stance they received directly from you. Mr. Lee told me. I have never informed Ms. Kiedel or Mr. Smith of that.

Attachment #48a

Industry Factories, USP Atwater, California, FCI Elkton, Ohio, FCI Texarkana, Arkansas, FCI Marianna, Florida, FCI LaTuna, Texas, and USP Lewisburgh, Pennsylvania

1. Program Statement 1600.08, Chapter 1, Page 24, Section P - Personal Protective Equipment, Subpart 7 - A Hazard Assessment of Personal Protective Equipment must be. conducted in compliance with **OSHA 29 CFR 1910-Subpart I Appendix B.**

2. OSHA 29 CFR 1910.132(d)(1) - The employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall.

3. OSHA 29 CFR 1910.132(d)(1)(I) - Select and have each affected employee use , the type of PPE that will protect the affected employee from the hazards identified in the hazard assessment.

4. OSHA 29 CFR 1910 -Subpart I Appendix B provides the following: Section 3 (a) - The purpose of the survey is to identify sources of hazards to workers or co-workers.

5. Consideration should be given to the basic hazard categories: 1. Impact, 2. Penetration, 3. Compression (roll-over), 4. Chemical, 5. Heat, 6. **Harmful Dusts**, and 7. Light (optical) radiation.

6. Section 3 b - Sources. During the walk-through survey the safety officer should observe: Section (d) - sources of harmful dust. Section 3 d - Each of the basic hazards should be reviewed and a determination made as to the type, level of risk, and seriousness of potential injury from each of the hazards found in the area.

7. OSHA 29 CFR 1910.134 Respiratory Protection and Respirator Cleaning Procedures

8.Environmental Protection Agency (EPA) Risk Assessment requirements for work exposure, metal exposure, and environmental releases of hazardous emissions.

9. OSHA 29 CFR 1910.1027(g)(3) Cadmium Respiratory Protection and Respirator selection.

10. OSHA 29 CFR 1910.1025(f)(3) Lead Respiratory Protection and Respiratory Selection.

11. Two methods of testing for harmful dusts is by air sampling and wipe testing.

Action Planned or Should be Taken: The list below is the violation of Law, Rule, or Regulation, Specific Danger to Public Health or Safety, Abuse of Authority at the Federal Prison Industry Factories, USP Atwater, California, FCI Elkton, Ohio, FCI Texarkana, Arkansas, FCI Marianna, Florida, FCI LaTuna, Texas, and USP Lewisburgh, Pennsylvania

To take no disciplinary action against certain management officials or top executive staff is criminal in it's self. The Office of Internal Affairs never conducted a thorough review, but only one that is partial towards Federal Prison Industries and the Agency. This investigation continues grow into an conspiracy, obstruction, and concealment of criminal actions. During the OIA interview the following was discussed:

On approximately December 8, 2004, I asked Mr. Korbelak during the Office of Internal Affairs interview why would we use wipe sampling if this type of sampling not covered by

OSHA. Mr. Korbelak told me, it allows you to identify containment's on work surfaces, floors, walls, and equipment that sir sampling wouldn't detect. I asked Mr. Korbelak, if the wipe samples taken identified any hazardous metals at the work stations and other places in the factory. Mr. Korbelak replied, Yes. I then asked Mr. Korbelak, that we can assume over a period of time at low concentrations to hazardous metals by the inmates touching it at their work stations or blow back into the air with their air guns, they could ingest and inhale the hazardous metals to potentially raise their blood and urine levels. Mr. Korbelak told me, Yes.
(See Attachments 49 & 49a)

Allegation 3 Response:

The blood test results provided to me by Mr. Ricardo Willis, Health Services Administrator revealed high concentrations of barium and cadmium in three inmates blood. Mr. Willis informed Ms. Aragon and I that the inmates would not be approved to work in the glass breaking operation, because of the elevated barium and cadmium in their blood.

Findings Response:

The blood samples of three inmate workers being medically cleared to work the glass breaking operations for the first time, which Barium in their blood was 144, 147, and 385 micrograms per liter warrants the declaration of an imminent hazard, unsafe or unhealthy work environment.

After speaking with Ms. Clark, OSHA she informed me that the new test results were lower then the initial test results on the three inmate in question, but they still had levels of barium in their blood. I informed Ms. Clark, was she aware the three inmates worked initially in the factory and had been removed from the factory prior to their November 2004 blood and urine tests being taken and that these three inmates never worked the glass breaking operation. Ms. Clark stated, "the agency never made me aware of this." I replied, Federal Prison Industry, Central Office, and Regional Office staff you highly commented about earlier in our conversation never informed you of this? Ms. Clark stated, I was not informed of these details by any of them." I replied, now you no what I have been dealing with.

The three inmates request through the Safety Department to file an inmate work related injury report on their exposure, which the Safety Department initiated the paper work and forwarded it to Ms. Aragon. Ms. Aragon would not complete the form, which prevents the Central Safety Committee Board to make any formal decision to pay the inmates for pay loss during their removal from the factory and being forced to use vacation time or if they didn't have vacation time on the books they were not payed at all.
(See Attachments 50, 50a, 50b, 50c, 50d, & 50e)

Conclusion Response:

In August 4, 2004, during a teleconference Ms. Aragon, Mr. Gonzalez, Mr. V. Smith, Ms. Keidel, and Ms. Cantwell, They were not be able to agree on my recommendation to test all inmate workers in the factory and warehouse, we all agreed to randomly conduct blood and urine

OATH

I declare, under the pain and penalty of perjury, that the foregoing statement consisting of 6 page(s) is true and accurate to the best of my knowledge and belief.

AFFIANT

Subscribed and sworn to before me this 10th day of December, 2004

Authorized by 5 U.S.C. 303
to Administer Oaths

Scott Hourigan, Special Agent
Federal Bureau of Prisons
Office of Internal Affairs

This is an addendum to my Affidavit of 23 pages on December 9, 2004, which I was advised by the OIA Investigators that I could do if I thought of anything else that would be helpful.

ion 61. I asked Mr. Korbelak during the interview why would we use wipe sampling if this type of sampling not covered by OSHA. Mr. Korbelak told me it allows you to identify Contaminents on work surfaces, floors, walls, and equipment that air sampling would not detect. I ask Mr. Korbelak if the wipe samples taken identified any hazardous metals at the work stations and other place in the factory. Mr. Korbelak replied, yes. I then asked Mr. Korbelak that we can assume over a period of time at low concentration to hazardous metals the inmates touch at their work Stations or blow back into the air with their air guns they could ingest and inhale the hazardous mentals to potential raise their blood and urine Levels. Mr. Korbelak told me yes.

Attachment #49a

12/10/04

U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Prisons

FEDERAL BUREAU OF PRISONS
INJURY REPORT - INMATE

Completed by Interviewing Supervisor

1. Institution	2. Name of Injured	3. Register Number
USP [redacted]	[redacted]	[redacted]

4. Injured's Duty Assignment	5. Injured's Duty Hours	6. Date and Time of Injury
UNICOR	7:30 AM TO 1:00 PM	11/01/04 7:30 am

7. Where Did Injury Happen (be specific as to location)	8. Date and Time Injury Was REPORTED
UNICOR	11/01/04 7:30 am

9. In Your Opinion, Was This Injury: (a) ☒ Work Related ☐ Non Work Related

(b) ☐ Institution ☒ Industry ☐ Recreation ☐ Program or Activity

☐ Other (explain)

10. To Whom Was Injury First Reported	11. Part of Body Involved (left knee, etc.)	12. Kind of Injury (burn, cut, etc.)
MRS. AREGON, FACTORY MGR		

13. Injured's alleged Witnesses to Injury (staff and inmates)

14. Injured's Brief Statement as to How Injury Happened. Include Injured's Recommendation for Prevention. (Continue on additional blank sheets, if necessary.)

● Injured's Signature and Date:

15. Supervisor's Statement — Must include: a. Last Safety Talk Given, b. Safety Equipment Provided, c. Whether Safety Equipment in Use, d. Whether Proper Guarding Used, e. Corrective Action Taken. (Continue on additional blank sheets, if necessary)

Refer to E-mail - Blood Testing dated 11-1-04

● Supervisor's Signature, Title and Date:

Completed by Safety Manager

16. Medical Description of Injury (refer to BP-Adm 73)

17. This Injury Required:
- a. ☐ No Medical Attention
- b. ☐ Minor First Aid
- c. ☐ Hospitalization — from _____ to _____
- d. ☐ Work Time Lost — from _____ to _____
- e. ☐ Other (explain)

Total Lost Time Days:

18.

COMPUTER CODING

Inst. Code | Reg. No. | Name (Last, First, MI)

Date of Inj. (mo-da-yr) | Dept. | Area | Machine | Body Part | Source

Haz. Cond. | Haz. Act | Med. Find. | Acc. Type | Acc./Inj. Cat. | Days Lost | Pending

Distribution - Original-Inmate file
Copy-Safety Office

U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Prisons

INJURY-LOST-TIME FOLLOW-UP REPORT

NAME [redacted] REG. NO. [redacted]

RE: INJURY OF 11/01/04
Date

1. (Witnesses Statement) Use Additional Sheets of Plain Paper if Necessary.

RECOMMENDATION FOR PREVENTION _____

Witness Signature | Reg. No. or Title | Date

2. (Department Head's Statement)
Refer to E-mail-Blood Testing dated 11-1-04

FOLLOW-UP OR CORRECTION ACTION TAKEN _____

J. Mayo — Department Head | Factory Manager — Title | 11-16-04 — Date

3. (Safety Manager's Comments)

Safety Manager | Date

4. (Safety Committee Review—Comments)

Associate Warden's Signature

NAME _____ REG. NO. _____

RE: INJURY OF _____
Date

5. The Institution Safety Committee has reviewed the report of your injury and it is their opinion that your injury was work related.

The Institution Safety Committee has reviewed the report of your injury and it is their opinion that your injury was not work related.

The final determination of the work relatedness of this injury is subject to review by the Inmate Accident Compensation Committee upon the filing of a claim for Inmate Accident Compensation due to a physical impairment resulting from the injury.

Safety Manager | Date

Distribution - Original-Inmate file
Copy-Safety Office

Attachment #50a

U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Prisons

FEDERAL BUREAU OF PRISONS
INJURY REPORT - INMATE

1. Institution	2. Name of Injured	3. Register Number
[redacted]	[redacted]	[redacted]

4. Injured's Duty Assignment	5. Injured's Duty Hours	6. Date and Time of Injury
UNICOR	7:30 AM TO 3:00 PM	11/01/04 7:30 AM

7. Where Did Injury Happen (be specific as to location)	8. Date and Time Injury Was REPORTED
UNICOR	11/01/04 7:30 AM

9. In Your Opinion, Was This Injury: (a) ☒ Work Related ☐ Non Work Related

(b) ☐ Institution ☒ Industry ☐ Recreation ☐ Program or Activity

☐ Other (explain)

10. To Whom Was Injury First Reported	11. Part of Body Involved (left knee, etc.)	12. Kind of Injury (burn, cut, etc.)
MRS. AREGON, FACTORY MGR		

13. Injured's alleged Witnesses to Injury (staff and inmates)

14. Injured's Brief Statement as to How Injury Happened. Include Injured's Recommendation for Prevention. (Continue on additional blank sheets, if necessary.)

Completed by Interviewing Supervisor

● Injured's Signature and Date:

15. Supervisor's Statement — Must include: a. Last Safety Talk Given, b. Safety Equipment Provided, c. Whether Safety Equipment in Use, d. Whether Proper Guarding Used, e. Corrective Action Taken. (Continue on additional blank sheets, if necessary)

Refer to Email - Blood Testing date 11-1-04

● Supervisor's Signature, Title and Date:

16. Medical Description of Injury (refer to BP-Adm 73)	17. This Injury Required:
	a. ☐ No Medical Attention b. ☐ Minor First Aid c. ☐ Hospitalization — from _____ to _____ d. ☐ Work Time Lost — from _____ to _____ e. ☐ Other (explain) Total Lost Time Days:

Completed by Safety Manager

18. **COMPUTER CODING**

Inst. Code _____ Reg. No. _____ Name (Last, First, MI) _____

Date of Inj. (mo-da-yr) ☐☐☐☐☐☐ Dept. ☐☐☐ Area ☐☐☐☐ Machine ☐☐☐☐ Body Part ☐☐☐ Source ☐☐☐☐

Haz. Cond. ☐☐☐☐ Haz. Act ☐☐☐☐ Med. Find. ☐☐☐ Acc. Type ☐☐☐☐ Acc./Inj. Cat. ☐☐ Days Lost ☐☐☐☐ Pending ☐☐☐

Distribution - Original-Inmate file
Copy-Safety Office

Attachment #52

DEPARTMENT OF JUSTICE
Federal Bureau of Prisons

INJURY-LOST-TIME FOLLOW-UP REPORT

NAME [redacted] REG. NO. [redacted]

RE: INJURY OF 11/01/04
Date

1. (Witnesses Statement) Use Additional Sheets of Plain Paper if Necessary.

RECOMMENDATION FOR PREVENTION _____

_____ Witness Signature | _____ Reg. No. or Title | _____ Date

2. (Department Head's Statement)

Refer to E-mail-Blood Testing dated 11-1-04

FOLLOW-UP OR CORRECTION ACTION TAKEN _____

J Magal Department Head | Factory Manager Title | 11-16-04 Date

3. (Safety Manager's Comments)

_____ Safety Manager | _____ Date

4. (Safety Committee Review—Comments)

_____ Associate Warden's Signature

NAME _____ REG. NO. _____

RE: INJURY OF _____
Date

5. The Institution Safety Committee has reviewed the report of your injury and it is their opinion that your injury was work related.

The Institution Safety Committee has reviewed the report of your injury and it is their opinion that your injury was not work related.

The final determination of the work relatedness of this injury is subject to review by the Inmate Accident Compensation Committee upon the filing of a claim for Inmate Accident Compensation due to a physical impairment resulting from the injury.

_____ Safety Manager | _____ Date

Distribution - Original-Inmate file

S. DEPARTMENT OF JUSTICE
Federal Bureau of Prisons

FEDERAL BUREAU OF PRISONS
INJURY REPORT - INMATE

1. Institution	2. Name of Injured	3. Register Number
USP ATWATER	[redacted]	[redacted]

4. Injured's Duty Assignment	5. Injured's Duty Hours	6. Date and Time of Injury
UNICOR	7:30 AM TO 1:00 PM	11/01/04

7. Where Did Injury Happen (be specific as to location)	8. Date and Time Injury Was REPORTED
UNICOR	11/01/04 7:30 AM

9. In Your Opinion, Was This Injury: (a) ☒ Work Related ☐ Non Work Related

(b) ☐ Institution ☒ Industry ☐ Recreation ☐ Program or Activity

☐ Other (explain)

10. To Whom Was Injury First Reported	11. Part of Body Involved (left knee, etc.)	12. Kind of Injury (burn, cut, etc.)
MRS. AREGON, FACTORY MGR		

13. Injured's alleged Witnesses to Injury (staff and inmates)

14. Injured's Brief Statement as to How Injury Happened. Include Injured's Recommendation for Prevention. (Continue on additional blank sheets, if necessary.)

● Injured's Signature and Date:

15. Supervisor's Statement — Must include: a. Last Safety Talk Given, b. Safety Equipment Provided, c. Whether Safety Equipment in Use, d. Whether Proper Guarding Used, e. Corrective Action Taken. (Continue on additional blank sheets, if necessary)

Refer to E-mail - Blood Testing dated 11-1-04

● Supervisor's Signature, Title and Date:

16. Medical Description of Injury (refer to BP-Adm 73)	17. This Injury Required:
	a. ☐ No Medical Attention b. ☐ Minor First Aid c. ☐ Hospitalization — from _____ to _____ d. ☐ Work Time Lost — from _____ to _____ e. ☐ Other (explain) Total Lost Time Days:

18. **COMPUTER CODING**

Inst. Code | Reg. No. | Name (Last, First, MI)

Date of Inj. (mo-da-yr) | Dept. | Area | Machine | Body Part | Source

Haz. Cond. | Haz. Act | Med. Find. | Acc. Type | Acc./Inj. Cat. | Days Lost | Pending

Completed by Interviewing Supervisor

Completed by Safety Manager

Distribution - Original-Inmate file

U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Prisons

INJURY-LOST-TIME FOLLOW-UP REPORT

NAME [redacted] REG. NO. [redacted]

RE: INJURY OF 11/01/04
Date

1. (Witnesses Statement) Use Additional Sheets of Plain Paper if Necessary.

RECOMMENDATION FOR PREVENTION _____

_____ Witness Signature | _____ Reg. No. or Title | _____ Date

2. (Department Head's Statement)

Refer to E-mail - Blood Testing dated 11-1-04

FOLLOW-UP OR CORRECTION ACTION TAKEN _____

J Aragon Department Head | Factory Manager Title | 11-16-04 Date

3. (Safety Manager's Comments)

_____ Safety Manager | _____ Date

4. (Safety Committee Review—Comments)

_____ Associate Warden's Signature

NAME _____ REG. NO. _____

RE: INJURY OF _____
Date

5. The Institution Safety Committee has reviewed the report of your injury and it is their opinion that your injury was work related.

The Institution Safety Committee has reviewed the report of your injury and it is their opinion that your injury was not work related.

The final determination of the work relatedness of this injury is subject to review by the Inmate Accident Compensation Committee upon the filing of a claim for Inmate Accident Compensation due to a physical impairment resulting from the injury.

_____ Safety Manager | _____ Date

Distribution - Original-Inmate file
Copy-Safety Office

Attachment #2

testing to 20% of the inmate workers in the factory and warehouse.

Mr. Alan Booth, Associate Warden reminded Mr. Schultz, Mr. Luna, Mr. Stahley, and Mr. Gonzalez about Federal Prison Industries agreeing to test all inmate in the factory and warehouse to have baselines, because of the heavy dust that's generated when all three disassembling areas are running full strength.

Inmates that have become concerned for their safety and health and requested through Health Services to have their blood and urine tested for lead, barium, cadmium, and beryllium, which Dr. Franco returned their inmate request to staff member (COP Outs) telling them, "These tests are requested through Safety, Please address your concern with them." The Safety Department spoke Mr. Schultz, Mr. Gonzalez, Ms. Aragon, Mr. Novicky, and Mr. Willis, which they all refused to allow the inmates to have the blood and urine tested. This was even after the Safety Department strongly urged them to conduct a few inmates to determine what their blood levels were and if they were below the levels which the agency stands by, then it would keep inmates at bay. Also, Mr. Novicky stated, "the cost of the tests are to expensive, which UNICOR can't afford wasting money every time an inmate believes they were exposed, otherwise we would go out of business." **(See Attachments 51, 51a, 51b, 51c, 51d, 51e, 51f, 51g, 51h, & 51i)**

Listing of Actual/Apparent Violations: The list below is the violation of Law, Rule, or Regulation, Specific Danger to Public Health or Safety, Abuse of Authority at the Federal Prison Industry Factories, USP Atwater, California, FCI Elkton, Ohio, FCI Texarkana, Arkansas, FCI Marianna, Florida, FCI LaTuna, Texas, and USP Lewisburgh, Pennsylvania

Please review the **Allegation 2** Listing of Actual/Apparent Violations.

Action Planned or Should be Taken:

Please review the **Allegation 1 and 2** response to

Allegation 4 Response:

Knowing from reading the Material Safety Data Sheet, Computer Magazines, or information of the internet that we were dealing with hazardous materials, which Federal Prison Industries had not conducted any risk assessment or analytical data to determine what level of exposure to staff and inmates. Based of wipe samples from each test, I feared that we were exposing our staff and inmates to low concentration of hazardous materials that might not reach the occupational exposure limits, but exposing them enough were the metals would build-up in their system enough to cause serious health concerns years down the line according the information that was available to me at the time.

NOTE: On December 31, 2002, May 1, 2003, July 16, 2003, August 2, 2004, These memorandums addressed concerns about hazardous metals that could be toxic to staff and inmates if airborne and during the disassembling process for CPU's/CRT's, it was strongly recommended

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

October 5, 2004

FROM: Leroy Smith, Safety Manager

TO : [redacted]

The Industrial Hygienist for Central Office Safety has recently conducted random air monitoring, personal air sampling, and wipe testing through out the Unicor Factory to address your potential health concerns about toxic exposure to Lead, Cadmium, Barium, and Beryllium. The results of the testing will be provided to the Institution within the next month, which will determine any additional measures needing to be addressed. The Safety Department has additionally recommended to Executive staff, Unicor, and Health Services that random blood testing should be conducted to ensure a safe and healthy working environment for staff and inmate workers. Please address and further concerns through the inmate Administrative Remedy Process.

BP-A148.070
SEP 98

INMATE REQUEST TO STAFF MEMBER

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) Medical	DATE: 9-23-04
FROM: [redacted]	REGISTER NO.: [redacted]
WORK ASSIGNMENT: [redacted]	UNIT: 6-A

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

I am requesting a blood test For Beryllium, Cadmium and all other toxic elements that I am being expose to at work at the Unicor Factory. I have been getting headaces and I always feel sick to my Stomach.

[redacted]

Thank you

(Do not write below this line)

DISPOSITION:

These test are requested thru Safety. Dear Address your concerns with them

Signature Staff Member: [illegible] M.D. Clinical Director	Date: 9-23-04

Record Copy - File; Copy - Inmate

Attachment #51a

Replaces BP-148 of OCT 86

U.S. Department of Justice

Federal Bureau of Prisons

[redacted]

United States Penitentiary
Atwater, California 95301

October 5, 2004

FROM: Leroy Smith, Safety Manager

TO : [redacted]

The Industrial Hygienist for Central Office Safety has recently conducted random air monitoring, personal air sampling, and wipe testing through out the Unicor Factory to address your potential health concerns about toxic exposure to Lead, Cadmium, Barium, and Beryllium. The results of the testing will be provided to the Institution within the next month, which will determine any additional measures needing to be addressed. The Safety Department has additionally recommended to Executive staff, Unicor, and Health Services that random blood testing should be conducted to ensure a safe and healthy working environment for staff and inmate workers. The Health Services Department has been advised to put you on a callout and conduct an oral and written medical examination with you in accordance with 29 CFR 1910.1025 and 29 CFR 1910.1027 and program statement 1600.08. Please address any further concerns through the inmate Administrative Remedy Process.

Attachment #515

BP-S148.055 **INMATE REQUEST TO STAFF** CDFRM
SEP 98
U.S. DEPARTMENT OF JUSTICE **FEDERAL BUREAU OF PRISONS**

TO: (Name and Title of Staff Member) MR. SMITH, HEALTH+SAFETY	DATE: SEPT, 27, 04
FROM: [redacted]	REGISTER NO [redacted]
WORK ASSIGNMENT: UNICORE	UNIT: 5-A

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

REQUESTING an Appointment with you about my circumstance and SAFETY in UNICORE About the BARIUM in my Blood. could you see me This week?

THANK YOU

(Do not write below this line)

DISPOSITION:

Signature Staff Member | Date

Attachment #1C

Record Copy - File; Copy - Inmate
(This form may be replicated via WP)

This form replaces BP-148.070 dated Oct 86 and BP-S148.070 APR 94

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

October 5, 2004

FROM: Leroy Smith, Safety Manager

TO: [redacted]

The Industrial Hygienist for Central Office Safety has recently conducted random air monitoring, personal air sampling, and wipe testing through out the Unicor Factory to address your potential health concerns about toxic exposure to Lead, Cadmium, Barium, and Beryllium. The results of the testing will be provided to the Institution within the next month, which will determine any additional measures needing to be addressed. The Safety Department has additionally recommended to Executive staff, Unicor, and Health Services that random blood testing should be conducted to ensure a safe and healthy working environment for staff and inmate workers. Please address and further concerns through the inmate Administrative Remedy Process.

Attachment #1

BP-A148 070
SEP 96

INMATE REQUEST TO STAFF MEMBER

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) Medical	DATE: 9.23.04
FROM: [redacted]	REGISTER NO.: [redacted]
WORK ASSIGNMENT: Unicor	UNIT: 6A

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

I am requesting a blood test for Beryllium, cadmium, ~~[illegible]~~ lead and all other toxic elements that I am being expose to at work at the unicor factory

RECEIVED
SEP 29 2004

(Do not write below this line)

DISPOSITION:

Please address the issue with Safety

Signature Staff Member: J. Franco, M.D. Clinical Director	Date: 9-23-04

Record Copy - File; Copy - Inmate

Replaces BP-148 of OCT 86

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

October 5, 2004

FROM: Leroy Smith, Safety Manager

TO : [redacted]

The Industrial Hygienist for Central Office Safety has recently conducted random air monitoring, personal air sampling, and wipe testing through out the Unicor Factory to address your potential health concerns about toxic exposure to Lead, Cadmium, Barium, and Beryllium. The results of the testing will be provided to the Institution within the next month, which will determine any additional measures needing to be addressed. The Safety Department has additionally recommended to Executive staff, Unicor, and Health Services that random blood testing should be conducted to ensure a safe and healthy working environment for staff and inmate workers. The Health Services Department has been advised to put you on a callout and conduct an oral and written medical examination with you in accordance with 29 CFR 1910.1025 and 29 CFR 1910.1027 and program statement 1600.08. Please address any further concerns through the inmate Administrative Remedy Process.

BP-S148.055 **INMATE REQUEST TO STAFF** CDFRM
SEP 98
U.S. DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) MR. Smith	DATE: 9-29-04
FROM: [redacted]	REGISTER NO.: [redacted]
WORK ASSIGNMENT: UNICOR	UNIT: 5/A

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

Requesting your assistance
regarding my high Barium blood test
at Unicor factory

THANK YOU

[redacted]

RECEIVED
SEP 29 2004

(Do not write below this line)

DISPOSITION:

Signature Staff Member	Date

Record Copy - File; Copy - Inmate
(This form may be replicated via WP)

This form replaces BP-148.070 dated Oct 86
and BP-S148.070 APR 94

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

October 5, 2004

FROM: Leroy Smith, Safety Manager

TO: [redacted]

The Industrial Hygienist for Central Office Safety has recently conducted random air monitoring, personal air sampling, and wipe testing through out the Unicor Factory to address your potential health concerns about toxic exposure to Lead, Cadmium, Barium, and Beryllium. The results of the testing will be provided to the Institution within the next month, which will determine any additional measures needing to be addressed. The Safety Department has additionally recommended to Executive staff, Unicor, and Health Services that random blood testing should be conducted to ensure a safe and healthy working environment for staff and inmate workers. Please address and further concerns through the inmate Administrative Remedy Process.

BP-A148.070
APR 94

INMATE REQUEST TO STAFF MEMBER

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member)	DATE:
Mr. Smith Safety Mgr.	9-28-04
FROM: [redacted]	REGISTER NO.: [redacted]
WORK ASSIGNMENT: Unicor	UNIT: 6B

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

I am requesting that you authorize me for a blood test to search for heavy metal contaminants. The last one I had was slightly elevated for Barium. Please give me a written response for my own records.

Thankyou.

(Do not write below this line)

DISPOSITION:

Signature Staff Member:	Date:

Record Copy - File; Copy - Inmate

Attachment #51 I

initial and periodic blood testing be conducted, the Executive Branch rejected recommendations. **(See Attachments 52, 52a, 52c, & 52d)**

Deposition of Mr. Booth April 2, 2005, (Mary Dryovage) **Q.** But do you recall a temporary suspension of the glass breaking operation once the results came back from the lab? **A.** That's correct. **Q.** Do you recall if Mr. Smith disclosed blood testing for other inmates to Jesse Gonzalez and Janet Aragon, the Factory Manager? **A.** I don't know. If that happened or if it didn't happen, it would be within his realm of responsibility to provide Miss Aragon and Mr. Gonzalez copies or reports such as that because it would be in the performance of his duties. **Q.** Just so the record is clear, that factory remained open even after Mr. Smith temporarily suspended the operations because of health and safety concerns on this occasion in September 2004, did it not? **A.** I don't recall if the – could you repeat the question, please. **(See Attachments 53, 53a, 53b, 53c, 53d, & 53e)**

Findings Response:

Mr. Alan Booth, Associate Warden reminded Mr. Schultz, Mr. Luna, Mr. Stahley, and Mr. Gonzalez about Federal Prison Industries agreeing to test all inmate in the factory and warehouse to have baselines, because of the heavy dust that's generated when all three disassembling areas are running full strength.

Knowing this was out my range of expertise, I requested on November 28, 2001, January 31, 2002, and May 9, 2002, that Federal Prison Industries to conduct an Environmental Health Risk Assessment. Mr. Steven Schwalb, Mr. Novicky, and Mr. Stahley continued to deny any safety, health, or ventilation concerns and they would not fund this project to help FPI to come into compliance with OSHA regulations not EPA standards. **(See Attachments 1, 2, & 3)**

The UNICOR Cathode Ray Tubes Procedures developed in June 2003, was the first procedures developed for any CRT disassembling or CRT glass breaking operation. The CRT disassembling and CRT glass breaking operations at FCI Marianna, FCI Elkton, FCI Texarkana, FCI LaTuna, and USP Lewisburgh ran these operations in noncompliance with OSHA and EPA standards for one to ten years. Also, FPI can't use an rotation of inmate crews every four hours through the glass breaking operation, which is noncompliance with OSHA.

BOP Policy states - the Regional Safety Administrator reports to and advise the Regional Director on safety, fire safety, and environmental health issues. They assure the effectiveness and uniformity of safety programs in their regions through monitoring of scheduled program reviews and technical assist visits of all institutions. **They also monitor reports and data generated by the institution safety personnel. They provide first line guidance and technical supervision to institution safety personnel and assist in resolving problems that cannot be resolved at the institution level. (See Attachment 54)**

NOTE: Mr. Clements not once came to the institution to provide guidance or technical assistance on the safety and environmental health concerns associated with the disassembling and glass breaking operation. **(See Attachments 55, 55a, 55b, & 55c)**

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

December 31, 2002

MEMORANDUM FOR THOMAS W. STAHLEY, ASSOCIATE WARDEN (I&E)

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **CPU Disassembling**

I am very concerned with the heavy metals and other hazardous chemical compounds that could be toxic to staff and inmates if they are released into the environment during the disassembling process of the Central Processing Units (CPU's). The long and short term exposures to the heavy metals and hazardous chemicals may cause serious health concerns. As a precautionary measure the Safety Department strongly recommends initial and periodic blood testing be provided to inmate workers who disassemble the CPU's. In addition, staff should be provided the opportunity to have the initial and periodic blood testing conducted. Also a proper notification of the health concerns associated with the CPU's should be made to all staff and inmates. The recommended blood testing and notification is paramount to the continued success and regulatory compliance associated with the CPU disassembling process.

If I can provide any further assistance, please do not hesitate to let me know.

cc: Warden AW(O) AW(I&E) UNION Dave Clements
Larry Novicky Varney Smith Matthew Korbelak
Cynthia Keidel

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

May 1, 2003

MEMORANDUM FOR THOMAS W. STAHLEY, ASSOCIATE WARDEN (I&E)

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **CRT Disassembling Process**

I am very concerned with the heavy metals that could be toxic to staff and inmates if they are released into the environment during the disassembling and separation process of the Cathode Ray Tubes (CRT's). The long and short term exposures to the heavy metals even at low concentrations may cause serious health concerns. As a precautionary measure the Safety Department strongly recommends initial and periodic blood testing be provided to inmate workers who disassemble and separate the CRT's. Also a proper notification of the health concerns associated with the CRT's should be made to all inmate workers. The recommended blood testing and notification is paramount to the continued success and regulatory compliance associated with the CRT's disassembling process. This preventative measure will help protect Federal Prison Industries and Bureau of Prisons to future litigation.

If I can provide any further assistance, please do not hesitate to let me know.

cc: Warden AW(C) Factory Manager Dave Clements
Larry Novicky Varney Smith Matthew Korbelak
Cynthia Keidel UNION

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

July 16, 2003

MEMORANDUM FOR THOMAS W. STAHLEY, ASSOCIATE WARDEN (I&E)

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **CRT Disassembling Process**

This is a reminder of my previous memorandum date May 1, 2003. I am still very concerned with the heavy metals that could be toxic to staff and inmates if they are released into the environment during the disassembling and separation process of the Cathode Ray Tubes (CRT's). The long and short term exposures to the heavy metals even at low concentrations may cause serious health concerns. As a precautionary measure the Safety Department strongly recommends initial and periodic blood testing be provided to inmate workers who disassemble and separate the CRT's. Also a proper notification of the health concerns associated with the CRT's should be made to all inmate workers. The recommended blood testing and notification is paramount to the continued success and regulatory compliance associated with the CRT's disassembling process. This preventative measure will help protect Federal Prison Industries and Bureau of Prisons to future litigation.

If I can provide any further assistance, please do not hesitate to let me know.

cc: Warden AW(C) Factory Manager

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

August 2, 2004

MEMORANDUM FOR JANICE ARAGON, FACTORY MANAGER

FROM: /S/ **L. A. Smith, Safety Manager**

SUBJECT: **CRT Disassembling Process**

I am very concerned about the Cathode Ray Tubes (CRT's) being broken at the inmate work stations and separation points. The Safety Department essentially identified five major issues. First, the daily accidental breaking of CRT's at the work stations and separation points continue to release hazardous metals into the factory, which staff and inmate workers are subjected to lead, cadmium, barium, and beryllium exposure. Second, factory inmate workers are not currently in the medical surveillance program nor have they received proper training for cleaning up the CRT debris. Third, the CRT debris is currently being swept up dry and disposed in an open galord boxes. Fourth, proper personal protective equipment as well as a wetting agent and HEPA Vacuum are not being used during the cleanup of the CRT debris. Fifth, the galord boxes with the CRT debris remains unsecured and not stored at the satellite staging area, which allows the potential release of hazardous metals into the factory when being transported.

The long and short term exposures through inhalation, ingestion, and absorption to lead, cadmium, barium, beryllium etc. may cause serious health concerns. As a precautionary measure the Safety Department strongly recommends initial and periodic blood testing be provided to inmate workers who disassemble or come in contact with the CRT's according to OSHA 29 CFR 1910.1025 Lead and 29 CFR 1910.1027 Cadmium. In addition, proper notification of the health concerns associated with the CRT's should be made to all inmates. The blood testing and notification is paramount to the continued success and regulatory compliance associated with the CRT disassembling process. These types of initiatives should be implemented at other UNICOR glass breaking operations Bureau wide.

If I can provide any further assistance, please do not hesitate to let me know.

cc: AW(O) AW (C) Dave Clements Larry Novicky

concerned to the point where he wanted the operation totally shut down indefinitely.

Q. But you do recall a temporary suspension of the glass breaking operation once the results came back from the lab.

A. That's correct.

Q. Do you recall if Mr. Smith disclosed blood testing for other inmates to Jesse Gonzalez and Janet Aragon, the factory manager?

A. I don't know. If that happened or if it didn't happen, it would be within his realm of responsibility to provide Miss Aragon and Mr. Gonzalez copies or reports such as that because it would be in the performance of his duties.

Q. And was it appropriate for Mr. Smith to disclose this information to the central office?

A. If it was requested. However, it would also be an issue, as mentioned earlier, with the Freedom of Information Act. We would always resolve for clarification so that we didn't release information that was not releasable under law.

Q. Just so the record is clear, the factory remained open even after Mr. Smith temporarily

suspended the operations because of health and safety concerns on this occasion in September 2004, did it not?

A. I don't recall if the -- could you repeat the question, please.

Q. You testified a moment ago that the

Tarlton

Attachment #53

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

August 2, 2004

MEMORANDUM FOR JANICE ARAGON, FACTORY MANAGER

FROM: /S/
L. A. Smith, Safety Manager

SUBJECT: **CRT Disassembling Process**

I am very concerned about the Cathode Ray Tubes (CRT's) being broken at the inmate work stations and separation points. The Safety Department essentially identified five major issues. First, the daily accidental breaking of CRT's at the work stations and separation points continue to release hazardous metals into the factory, which staff and inmate workers are subjected to lead, cadmium, barium, and beryllium exposure. Second, factory inmate workers are not currently in the medical surveillance program nor have they received proper training for cleaning up the CRT debris. Third, the CRT debris is currently being swept up dry and disposed in an open galord boxes. Fourth, proper personal protective equipment as well as a wetting agent and HEPA Vacuum are not being used during the cleanup of the CRT debris. Fifth, the galord boxes with the CRT debris remains unsecured and not stored at the satellite staging area, which allows the potential release of hazardous metals into the factory when being transported.

The long and short term exposures through inhalation, ingestion, and absorption to lead, cadmium, barium, beryllium etc. may cause serious health concerns. As a precautionary measure the Safety Department strongly recommends initial and periodic blood testing be provided to inmate workers who disassemble or come in contact with the CRT's according to OSHA 29 CFR 1910.1025 Lead and 29 CFR 1910.1027 Cadmium. In addition, proper notification of the health concerns associated with the CRT's should be made to all inmates. The blood testing and notification is paramount to the continued success and regulatory compliance associated with the CRT disassembling process. These types of initiatives should be implemented at other UNICOR glass breaking operations Bureau wide.

If I can provide any further assistance, please do not hesitate to let me know.

cc: AW(O) AW (C) .Dave Clements Larry Novicky Steve Tussey
Phil Rodriguez

Mail Envelope Properties (410E9305.A70 : 13 : 12678)

Subject: CRT Disassembling Process
Creation Date 8/2/2004 12:16:21 PM
From: Leroy Smith

Created By: lxxxsmith@bop.gov

Recipients	**Action**	**Date & Time**
bop.gov ATWADM1.ATWDOM1	Delivered	8/2/2004 12:16:21 PM
ATW2375 CC (Phillip Rodriguez)	Opened	8/2/2004 1:36:05 PM
ATW6663 CC (Alan Booth)	Opened	8/9/2004 12:57:20 PM
RTL CC (Richard Luna)	Opened	8/2/2004 12:40:28 PM
bop.gov PO2.BOPMSCO	Delivered	8/2/2004 12:16:35 PM
BOP2594 CC (Steve Tussey)	Opened	8/2/2004 12:41:00 PM
bop.gov WXR_ADM1.WXR_DOM1	Delivered	8/2/2004 12:16:49 PM
WXR5719 CC (John Clements)	Opened	8/6/2004 8:00:19 AM
central.unicor.gov COPO.GWPD	Delivered	8/2/2004 12:19:41 PM
lnovicky CC (Larry Novicky)	Opened	8/2/2004 2:01:21 PM
central.unicor.gov AR_PO.LOSD	Delivered	8/2/2004 12:17:04 PM
jaragon (Janice Aragon)	Opened	8/2/2004 12:25:06 PM

Post Office	**Delivered**	**Route**
ATWADM1.ATWDOM1	8/2/2004 12:16:21 PM	bop.gov
PO2.BOPMSCO	8/2/2004 12:16:35 PM	bop.gov
WXR_ADM1.WXR_DOM1	8/2/2004 12:16:49 PM	bop.gov

From: Jesse Gonzalez
To: Smith, Leroy
Date: 9/21/2004 1:04:53 PM
Subject: Fwd: Re: UNICOR Inmate Medical Clearance "Glass Breaking Operation"

Leroy, thanks for your input.

We will go ahead and implement:
1. Medical will sit down and discuss the tests with the two inmates.
2. Both inmates will be removed for 30-60 days.
3. Both inmates will have their blood and urine re-tested within 30 to sixty days.

Please work closely with Mr. Willis to address the above issues.

Thanks, Jesse G.

CC: Aragon, Janice; Booth, Alan; Schultz, Paul; Willis, Ricardo

From: Jesse Gonzalez
To: Smith, Leroy
Date: 9/21/2004 3:27:51 PM
Subject: Fwd: Re: UNICOR Inmate Medical Clearance "Glass Breaking Operation"

Leroy,

4) we will wait and see, after our air sampling testing & additional testing of the two inmates.

5) we will provide and remind the inmates of good hygiene procedures.

Thanks, Jesse G.

>>> Leroy Smith 9/21/2004 1:11:34 PM >>>
Boss, what about the other recommendations I forwarded?

4) The additional testing of other inmates working in the packaging, shipping and receiving area for the USP and SPC?

5) Providing the inmates currently working the packaging, shipping and receiving area gloves and reminding them of good hygiene procedures.

Thanks.

>>> Jesse Gonzalez 9/21/2004 1:04:33 PM >>>
Leroy, thanks for your input.

We will go ahead and implement:
1. Medical will sit down and discuss the tests with the two inmates.
2. Both inmates will be removed for 30-60 days.
3. Both inmates will have their blood and urine re-tested within 30 to sixty days.

Please work closely with Mr. Willis to address the above issues.

Thanks, Jesse G.

CC: Aragon, Janice; Booth, Alan; Willis, Ricardo

Exhibit #53d

From: Alan Booth
To: Smith, Leroy
Date: 9/21/2004 11:51:05 AM
Subject: Re: UNICOR Inmate Medical Clearance "Glass Breaking Operation"

Thanks Leroy.

Note to Jesse: As we discussed, please prepare our response and ensure the appropriate follow-up to these recommendations. Should be prepared for Warden's review.

>>> Leroy Smith 09/21/04 09:16AM >>>
I am providing the following information per the conversation with
Mr. Booth, Acting Warden. I have been informed officially by
Mr. Willis, Ricardo, Health Services Administrator that Inmates Massaro #86697-011 and Murphy #36199-048 will not be medically cleared to work in the UNICOR Glass Breaking Operation. The inmates test results indicate elevated levels of Barium, which inmate Massaro levels were 147 MCG/L and inmate Murphy levels were 144 MCG/L. in their blood. At this time it is not certain how the inmates were exposed to Barium. These inmate had been working in the packaging, shipping and handling of the CRT's. As a precautionary measure the following recommendations should be implemented to address the current potential health concern with the computer recycling operation:

1) Medical will need to set down each inmate and discuss their tests results and any concerns there maybe with the elevated barium levels in their blood.

2) Each inmate should be removed from the packaging, shipping and receiving detail for approximately thirty to sixty days.

3) Then the inmates should have their blood and urine re-tested within the thirty to sixty days.

4) All inmates currently working in the packaging, shipping and receiving at the USP and SPC need to have their blood and urine tested to determine if this is an isolate exposure.

5) The inmates currently working the packaging, shipping and receiving area should be provided at a minimum gloves and reminded of the importance of good hygiene.

As a precautionary measure the Safety Department recommends the packaging, shipping and handling operations at the USP and SPC be temporarily suspended until the above recommendations have been implemented. These recommendations have been addressed previously, which are paramount to the continued success of the UNICOR Computer Recycling Operation.

If there are any questions, please do not hesitate to let me know.

CC: Gonzalez, Jesse; Schultz, Paul

Attachment #53c

f. Correctional Services Administrator: Central Office.

g. Fire Protection Engineer: Central Office.

4. Regional Safety Administrators report to and advise the Regional Directors on safety, fire safety, and environmental health issues. They assure the effectiveness and uniformity of safety programs in their regions through monitoring of scheduled program reviews and technical assist visits of all institutions. They also monitor reports and data generated by the institution safety personnel. They provide first line guidance and technical supervision to institution safety personnel and assist in resolving problems that cannot be resolved at the institution level.

5. Safety Managers serve as staff advisors to the Chief Executive Officers of their institutions on matters relating to safety and environmental health programs. As the Safety Manager works at the department head level and affects all areas of management, he reports to the CEO through the designated Associate Warden. Provides career mentoring to subordinates. Professional judgement shall be exercised when regulation and policy is not item specific.

6. Alternate Safety Manager. Where an institution has only a Safety Manager in the safety department, the CEO shall provide at least one suitable full-time relief during the Safety Manager's absences. The Safety Manager shall provide training for this position. To keep current, the Alternate shall be assigned full-time to the safety office for on-the-job training at least one week per quarter. Formal training must be budgeted through the institution training committee.

7. Chief Executive Officers shall:

a. Commit top management support to injury/illness reduction, and personally monitor the effectiveness of the program.

b. Ensure compliance with OSHA, EPA, and NFPA requirements and applicable state and local regulations.

c. Ensure sufficient staffing to administer the Bureau's Occupational Safety and Environmental Health Program.

d. Ensure the periodic inspections of workplaces by technically competent personnel.

e. Ensure the prompt abatement of unsafe or unhealthful working conditions.

f. Ensure that management information systems and records are kept accurately and posted annually for accidents, injuries and illnesses.

g. Ensure that employees are not subject to restraint, interference, coercion, discrimination or reprisal for exercising their rights under Executive Order 12196, 29 CFR 1960, or for participating in the Bureau's Safety and Environmental Health Program.

h. Ensure that adequate safety and environmental health training is provided management, supervisory personnel, safety personnel, collateral duty safety personnel and other employees of the Bureau.

i. Encourage participation in Federal Field Safety Councils.

8. Detail Supervisors shall:

a. Be held responsible for operating aggressive safety programs as part of their position description and as a critical element of their performance standards.

b. Train employees and inmates in safe practices and encourage good safety attitudes.

c. Familiarize themselves with hazards involved in the actual job or the physical surroundings of employees and inmates, and institute training on accident, fire prevention and environmental health.

d. Promptly and accurately report and record all accidents, injuries, illnesses and their causes to the Safety department within twenty-four hours of occurrence.

9. Employees and inmates of the Bureau shall:

a. Perform their duties in the safest possible manner and encourage fellow workers to do the same.

b. Comply with OSHA, EPA, NFPA and Bureau of Prisons Occupational Safety and Environmental Health Standards, and applicable state and local laws and regulations.

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

September 3, 2002

MEMORANDUM FOR DAVE CLEMENTS, WESTERN REGIONAL SAFETY ADMINISTRATOR

FROM: /S/
L. A. Smith, Safety Manager

SUBJECT: **UNICOR Glass Breaking Operation**

This memorandum is to inform you that an industrial hygiene and environmental assessment evaluation will be conducted on September 3 - 5, 2002, by Matthew Korbelak, Industrial Hygienist Central Office at USP Atwater. The assessment is specifically aimed at studying the effectiveness of the local ventilation exhaust system and evaluate staff and inmate exposure to harmful metals (i.e., Lead and Cadmium).

I would like to invite you to attend and assist with the environmental assessment evaluation and advise on the implementation of engineering control measures, which will ensure a safe working environment for staff and inmates at USP Atwater.

If there is any additional information needed, please do not hesitate to let me know.

cc: Thomas W. Stahley, Associate Warden (I&E)
Richard T. Luna, Associate Warden (O)

From: Leroy Smith
To: Clements, John
Subject: Initial Testing

I have been asked many questions about the initial blood and urine testing for lead and cadmium. Some of which is listed below.

1. Does this testing only affect staff and inmates currently working with or around CRT's.
2. Based off the air sampling results, would staff and inmates that have relocated or transferred be notified of potential exposures and provided blood and urine testing.
3. What about testing of all staff or inmates that conducted business or stood mainline in UNICOR while breaking CRT's.
3. Would staff and inmates that no longer work for the Bureau or have been released from custody need to be notified of potential exposures and provided blood and urine testing.
4. Why is the initial blood and urine testing only covering lead and cadmium, when barium, beryllium, and mercury etc. are hazardous metals associated with the CRT's.
5. What is the health affect to fire retardant material.

Can you please advise me on the direction or stance that UNICOR is taking towards ensuring all past and present staff and inmate workers have received proper notification of the potential exposure to hazardous metals. It is my understanding that the above mentioned concerns have affected other institutions processing CRT's longer then USP Atwater.

I greatly appreciate the continued support. If there are any questions, please do not hesitate to let me know.

CC: Lee, John L.; Rodriguez, Phillip; Tussey, Steve

Mail Envelope Properties (3F67505A.51A : 17 : 12678)

Subject: Initial Testing
Creation Date: 9/16/03 11:03AM
From: Leroy Smith

Created By: ATW3409.ATWADM1.ATWDOM1

Recipients	Action	Date & Time
ATWADM1.ATWDOM1	Delivered	09/16/03 11:03AM
ATW2375 CC (Phillip Rodriguez)	Opened	09/16/03 12:35PM
ATW6663 BC (Alan Booth)	Opened	09/16/03 01:07PM
PO2.BOPMSCO	Delivered	09/16/03 11:03AM
BOP1055 CC (Lee, John L.)		
BOP2594 CC (Steve Tussey)	Opened	09/16/03 11:04AM
WXR_ADM1.WXR_DOM1	Delivered	09/16/03 11:03AM
WXR5719 (Clements, John)	Opened	09/19/03 01:18PM

Post Office	Delivered	Route
ATWADM1.ATWDOM1	09/16/03 11:03AM	
PO2.BOPMSCO	09/16/03 11:03AM	
WXR_ADM1.WXR_DOM1	09/16/03 11:03AM	

Files	Size	Date & Time
MESSAGE	2354	09/16/03 11:03AM

Options
Auto Delete: No
Expiration Date: None
Notify Recipients: Yes
Priority: Standard
Reply Requested: No
Return Notification: None

Concealed Subject: No
Security: Standard

To Be Delivered: Immediate
Status Tracking: Delivered & Opened

From: Leroy Smith
To: Clements, John D.
Date: 9/24/02 11:02AM
Subject: USP Glass Breaking Operation Update

Per our conversation you have requested current information on the glass breaking operation at USP Atwater through Warden O'Brien. All information and the design of the glass breaking operation has been available since our initial notification provided to you. We have faxed you all analytical data conducted to date for your review and input. The request for you to assist us with the environmental assessment evaluation and advisement would have been well received during the week of September 3 - 5, 2002. The glass breaking operation at USP Atwater is still temporarily suspended. The Central Office has not advised us on the necessary environmental controls needed to reopen the glass breaking operation since the last air sampling results received September 10, 2002. The environmental controls were to be provided to us last week. We are continuing to store the glass monitors with limited storage space available. We look forward to receiving the Regional and Central Offices input in providing environmental controls that will comply with all regulatory guidelines and achieve the reopening of the glass breaking operation. The below attachments are for your review:

If I can continue to provide any additional information or assistance, please do not hesitate to let me know.

Bop Policy states - the Safety Manager serves as staff advisor to the Chief Executive Officer of their institution on matters relating to safety and environmental health programs. **As the Safety Manager works at the department head level and affects all areas of management, he reports to the CEO through the designated Associate Warden. (See Attachment 54)**

BOP Policy states - the Chief Executive Officer shall ensure compliance with OSHA, EPA, and NFPA requirements and applicable state and local regulations. Endure the prompt abatement of unsafe and unhealthful working conditions. **(See Attachment 54 & 54a)**

BOP Policy states - the Safety Administrator reports to and advises the Assistant Director, Health Services Division, concerning safety, fire safety, and environmental health issues. **He also serves as consultant to institution safety managers when such issues cannot be resolved at institution or regional levels. (See Attachment 56)**

BOP Policy states - This policy doesn't require a Safety Manager to seek guidance from OSHA, it's an option. It strictly talks about the development of an occupational safety and environmental health programs not a glass breaking booth. If the scope of the problem is beyond the expertise of the local Safety Manager, OSHA has been delegated responsibility by Executive Order 12196 to provide services and guidance to federal agencies and to assist them with development and implementation of Occupational safety and health programs. OSHA Technical Services will be available to agencies upon request. **(See Attachment 57 & 57a)**

BOP Policy states - Since many safety and health problems can be eliminated as soon as they are identified, the existence of a formal channel of communication should not preclude immediate corrective action by an employees/inmates supervisor in response to oral reports of unsafe and healthfull working conditions where such action is possible. **(See Attachment 58)**

If the Safety Manager has primary responsibility in regards of the Occupational Safety and Health Program the why was I subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights under Executive Oder 12196, 29 CFR 1960, or for participating in the Bureau's Safety and Environmental Health Program. I did contact the San Joaquin Valley Air Pollution District for environmental concerns and Merced County Department of Public Health Division of Environmental Health for Occupational Safety concerns.

Conclusion Response:

The Safety Managers allegations that the Warden told Mr. Smith not to contact OSHA was conducted on August 3, 2004, which the investigative implies his comments were bases of issue discussed over two year ago **(See Allegation 8b)**. This is fare from the truth and very misleading, please review the following attachments: **(See Attachments 52, 52a, 52c, & 52d) Also, I did speak with Mr. John Lee, Acting National Safety Administrator at the time, which informed me he was not aware of any safety or environmental health concerns with the UNICOR Computer Recycling Program.**

The development, procedures, exposure assessment, and organizational implementation of

g. NIOSH - National Institute of Occupational Safety and Health

h. EPA - Environmental Protection Agency

i. BOP - Bureau of Prisons

j. JCAHO - Joint Commission on Accreditation of Healthcare Organizations.

C. RESPONSIBILITY

1. Assistant Director. The Assistant Director, Health Services Division, serves as the designated Safety and Health Official for the Bureau of Prisons. He is responsible for the management of the Bureau's Occupational Safety and Health Program. He serves as the "Authority Having Jurisdiction" (AHJ) for the Bureau, as defined and used in National Fire Codes.

2. Safety Administrator. The Safety Administrator reports to and advises the Assistant Director, Health Services Division, concerning safety, fire safety, and environmental health issues. He also serves as consultant to institution safety managers when such issues cannot be resolved at institution or regional levels.

3. Life Safety Review Members. Their purpose is to review and recommend approval of action plans, variance requests, and additional functions deemed necessary by the AHJ. The institution's CEO shall initiate Plans-of-Actions and variance requests, forwarded to the regional office for comment, then sent to the Central office. Copies of comments and concerns made by the Central Office staff shall be sent to the regional and institutional staff along with the AHJ's final judgement and/or approval.

a. Assistant Director, Health Services Division or designee: Authority Having Jurisdiction (AHJ).

b. Regional Director or designee: Each to represent their respective regions on Life Safety issues.

c. Regional Safety and Facility Administrators: Each to represent their respective regions on Life Safety issues.

d. Safety Administrator: Central Office.

e. Facilities Administrator: Central Office.

5. Cotton pads, absorbent cotton and other single or dispensable toilette articles may not be reused, and shall be placed in a proper waste receptacle immediately after use.

6. The common use of brushes, neck duster, shaving mugs and shaving brushes shall be prohibited.

7. The making of shaving lather in a wash basin or lavatory for use in serving a patron is prohibited.

8. The use of powder puffs, sponges, lump alum, styptic pencils, and similar items is prohibited.

9. The removal or treatment of blackheads, carbuncles, infected hairs, or any sores or lesions is prohibited.

10. The pulling of hair from ears, nostrils, eyebrows, and moustaches is prohibited.

11. No barber or cosmetologist shall knowingly serve any patron known or suspected of having any communicable disease, or any infestation which is transferable to other patrons.

12. No barber or cosmetologist shall serve any patron when the skin of the patron's face, neck, or scalp is inflamed, scaling, contains pus, or is erupted, unless service of such patron is performed in accordance with the specific authorization of the Chief Medical Officer.

13. No person shall be served when infested with head lice.

Mobile Operations. Hair care sanitation procedures used in stationary operation are also required for mobile operations. Portable barber and cosmetology kits shall be provided with sufficient disinfectants, fungicides and equipment to ensure the sanitary operation of the mobile shop and the protection of the patrons.

J. INDUSTRIAL HYGIENE

1. General. While other publications will be of assistance in managing the industrial hygiene program, the OSHA regulations are the governing authority. Health hazards discussed in this section concern environmental conditions present in the workplace which may cause illness or death. If the scope of the problem is beyond the expertise of the local Safety Manager, OSHA has been delegated responsibility by Executive Order 12196 to provide services and guidance to federal agencies and to assist them with development and implementation of occupational safety and health

programs. OSHA Technical Services will be available to agencies upon request. In addition to OSHA's assistance, NIOSH will conduct health hazard evaluations by written request to:

NIOSH
Hazard Evaluation and Technical
Assistance Branch, Mail Stop R-9
4676 Columbia Parkway
Cincinnati OH 45226

NIOSH will evaluate hazards resulting from exposure to chemical substances only, while OSHA will assist with evaluation of physical agents (e.g. noise, heat, etc.).

2. Feasible Administrative Work Practice and Engineering Controls

a. Administrative Controls. Any procedures which significantly limit daily exposure by control or manipulation of the work schedule. Use of personal protective equipment is not considered a means of administrative control.

b. Work Practice Controls. The actions of the employee which result in the reduction of exposure through such methods as effective use of engineering controls, sanitation and hygiene practices, or other changes in the way the employee performs the job. Personal protective equipment is a work practice control.

c. Engineering Controls. Consist of substitution, isolation, ventilation and equipment modification.

(1) Substitution may involve process change, equipment replacement or material substitution.

(2) Isolation results in the reduction of the hazard by providing a barrier around the material, equipment, process or employee. This barrier may consist of a physical separation or isolation by distance.

(3) Ventilation is the process of supplying or removing air by natural draft or mechanical means, to or from any space. It is a method used to control airborne contaminants which adversely affect employees and the general environment. (For proper measurement and design of ventilation systems, the Industrial Ventilation manual published by the American Conference of Governmental Industrial Hygienists shall be used as a guide.)

c. The institution's CEO or the Regional Director may request technical assistance visits. Request for Central Office technical support must be routed through the Regional Director to Assistant Director, Health Services Division.

I. REPORTING HAZARDS

1. Definition. For the purposes of this section, "employee" shall mean civilian staff, as defined in 29 CFR 1960.2(g).

2. Any employee or inmate or representative of employees or inmates who believes that an unsafe or unhealthful condition exists in any workplace where the person is employed, has the right to make a report of the unsafe or unhealthful working condition to the Safety Manager, the CEO of the institution, Regional or Central Office staff, or directly to the Department of Labor, Occupational Safety and Health Administration. Since many safety and health problems can be eliminated as soon as they are identified, the existence of a formal channel of communication should not preclude immediate corrective action by an employee's/inmate's supervisor in response to oral reports of unsafe or unhealthful working conditions where such action is possible.

a. Each report of an existing or potential unsafe or unhealthful working condition shall be recorded in a log maintained at the institution. A copy of each report shall be presented to the Central Safety Committee at the next scheduled meeting.

b. The log shall contain the following information at a minimum: date, time, code/reference/file number, location of condition, brief description of condition, classification (imminent danger, serious, or other), and date and nature of action taken. A sample of a possible log format is at Appendix J.

c. Inspection by the Safety Manager or designee shall be conducted upon notification for employee or inmate reports of imminent danger conditions, within eight hours for potentially serious safety and health conditions, and within three working days for other than serious safety and environmental health conditions.

d. An employee or inmate submitting a report of unsafe or unhealthful condition shall be notified in writing within 15 days if the official receiving the report determines there are not reasonable grounds to believe such a hazard exists and does not plan to make an inspection based on such a report. A written

the Computer Recycling Program is the responsibility of Federal Prison Industries. Federal Prison Industries should of consulted the Safety and Health Division before the first computer recycling program went into operation: Please review the following:

NOTE: On July 12, 2004, Mr. Korbelak stated, "USP Atwater's test results will have an effect on other institutions Bureau-Wide, which will effect older recycling programs and current recycling programs going online." He then stated, "FCI Elkton had conducted some testing, but he couldn't validate the testing, which they based their decision to conduct the glass breaking operations from the testing results from the company UNICOR sells their glass too, per a conversation with Mr. Larry Novicky. Mr. Korbelak also stated, the initial baseline testing conducted by USP Atwater appears to be the only reliable test results anyone has been able to present to him for review. **(See Attachment 1, 2, & 3 and this is mentioned in my Affidavit) (These statements from Mr. Korbelak puts in question Allegation 4 Response)**

During the Office of Internal Affairs interview Mr. Cantwell told me, that UNICOR and the Health Service Division were working closely together on the glass breaking operations environmental concerns. I told Ms. Cantwell, not according to the conversation I had with Mr. Tussey and Mr. Lee on August 28, 2002. Ms. Cantwell turned and looked at Mr. Korbelak. Mr. Korbelak told Ms. Cantwell and myself that there was some problems with communication between both UNICOR and the Health Service Division.
(See Attachments 59 & 59a part of my Affidavit)

The Safety Manager or any employee has the right to call OSHA to seek guidance or assistance dealing with occupational safety and health concerns. This includes, Federal Prison Industries, Central Office and Institution, Safety and Health Division, Central Office, and Safety Program Regional Office. If these Environmental, Industrial Hygiene, Quality Assurance, and Senior Occupational Safety and Environmental Health staff can't assist the field and the Safety Managers in the field need to call OSHA for guidance, these positions should be streamlined to save the Bureau of Prisons even more money to meet the budgetary needs.

Listing of Actual/Apparent Violations: The list below is the violation of Law, Rule, or Regulation, Specific Danger to Public Health or Safety, Abuse of Authority at the Federal Prison Industry Factories, USP Atwater, California, FCI Elkton, Ohio, FCI Texarkana, Arkansas, FCI Marianna, Florida, FCI LaTuna, Texas, and USP Lewisburgh, Pennsylvania

1. Executive Order 12196 & OSHA 29 1960, that Safety Officials shall have sufficient authority to correct unsafe and unhealthy working conditions.
2. Environmental Protection Agency (EPA) Risk Assessment requirements for work exposure, metal exposure, and environmental releases of hazardous emissions.
3. OSHA 1910.1000 Air Contaminants - to determine employee exposure
4. OSHA 29 CFR 1910.1025 Lead (d)(1)(i)(2) Exposure Monitoring - Initial Determination to assess employee exposure which would occur if the employee were not using a respirator.
5. OSHA 29 CFR 1910.1027 Cadmium(d)(1)(i)(2)(i) Exposure Monitoring - Specific Initial Monitoring to assess employee exposure which would occur if the employee were not using a respirator.

OATH

I declare, under the pain and penalty of perjury, that the foregoing statement consisting of 6 page(s) is true and accurate to the best of my knowledge and belief.

AFFIANT

Subscribed and sworn to before me this 10th day of December, 2004

Authorized by 5 U.S.C. 303
to Administer Oaths

Scott Houridan, Special Agent
Federal Bureau of Prisons
Office of Internal Affairs

This is an addendum to my Affidavit of 23 pages on December 9 which I was advised by the OEA investigators that I could do if I thought of any thing else that would be helpful.

Section 64.

Ms. Cantwell told me that Unicor and Health Service Division were working closely to gether on the glass breaking operation environmental concerns. I told Ms. Cantwell not according to a conversation I had with Ms. Tussey and Mr. Lee on August 28, 2002. Ms. Cantwell turned and looked at Mr. Korbelak. Mr. Korbelak told Ms. Cantwell and myself that there was some problems with communication between both Unicor and Health Services Division.

Attachment #59a

12/10/01

6. Bureau's Program Statement 1600.08, Chapter 2, Page 17, Section 3 - Toxic and Hazardous Substances.

7. OSHA 29 CFR 1910.1000(e) Administrative or engineering controls must first be determined and implemented whenever feasible, and equipment or technical measures used for this purpose must be approved for each particular use by use by a competent industrial hygienist or other qualified technically qualified person

8. Program Statement 1600.08, Chapter 1, Page 4, Section g - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights under Executive Oder 12196, 29 CFR 1960, or for participating in the Bureau's Safety and Environmental Health Program.

9. OSHA 29 CFR 1910.1027 Cadmium(f)(v) Methods of Compliance - The employer shall not use employee rotation as a method of compliance.

Action Planned or Should be Taken:

Congressional Criminal Hearing: The OIA has totally focused on issues of today and not even attempt to investigate the exposure to staff and inmates, and staff families one to ten years. These staff, inmates, and staff families will be lucky if they don't face any health conditions, because of their exposure to low concentrations or low doses of hazardous metals over time. The Director Bureau of Prisons, Western Regional Director, Assistant Deputy Director of UNICOR, the entire Federal Prison Industries Computer Recycling Program Managers, and the National Safety and Health Division staff have abused their authority by ignoring the local safety officials plan of action and correction action and covering up the real issues. They have violated Executive Order 12196 and 29 CFR 1960 which states - that Safety Officials shall have sufficient authority to correct unsafe and unhealthy working conditions, not to be ostracize and/or discredited personally and professionally, which makes them reluctant to enforce OSHA and EPA standards to ensure their careers are not affected.

Allegation 5 Response:

Federal Prison Industries (FPI)would not always have a full crew in the glass breaking operation during most air sampling tests. FPI would allow inmates to lay-in, less product would be brought in, and/or half the crews would be at commissary etc., which would reduce the amount of dust generated by the disassembling operations.

Findings Response:

I advise Federal Prison Industries of my concerns of the build-up of airborne dust generated during the disassembling of computer equipment. I also advise FPI that respirable dust can become a health concern for staff and inmate workers over a period of time or immediate to staff and inmate workers with preexisting respiratory health concerns. I then advised FPI that the current masks being utilized in the factory is identified as a nuisance mask, which this mask is used for comfort not protection from airborne particulate's (dust). **(See Attachments 60 & 60a)**

The other concern with the amount of airborne particulate's (dust) being generated may

affect the food and drink being prepared and served in the factory. This may become a concern with food contamination. **(See Attachments 60 & 60a)**

Conclusion Response:

I also advised FPI that an exhaust ventilation system be installed to meet the current needs of the UNICOR Recycling factory and meets the American National Standards Fundamentals Governing the Design and Operation of Local Exhaust Systems. Federal Prison Industries refused to comply with the recommendation of installing proper ventilation to improve the air quality in the UNICOR factory. **(See Attachments 60 & 60a)**

On May 9, 2005, samples were taken of the swamp cooler filters on the UNICOR factory roof. These swamp coolers are approximately twenty-five (25) feet above the disassembling areas (Production Lines) and produce approximately 260 filters annually to be replaced and through into the general waste stream, into the local county dumps.

NOTE: The test conducted was RCRA 13 Test Pollutant Metals and the NIOSH standards for Pollutant Metals, which showed the following metals above the regulatory limits: **1.** Metals-Antimony Concentrations 9.1 mg.kg to Regulatory Limit 5.0, **2.** Metals-Arsenic Concentrations 5.3 mg/kg to Regulatory Limit 2.0, **3.** Metals-Cadmium Concentrations 2.6 mg/kg to Regulatory Limit 1.0, **4.** Metals-Chromium Concentrations 35 mg/kg to Regulatory Limit 2.5, **5.** Metals-Copper Concentrations 120 mg/kg to Regulatory Limit 5.0, **6.** Metals-Lead Concentrations 52 mg/kg to Regulatory Limit 2.5, **7.** Metals-Nickel 28 mg/kg to Regulatory Limit 5.0, **8.** Metals-Zinic Concentrations 2200 mg/kg to Regulatory Limit 5.0, and **9.** Metals-Mercury Concentrations 0.51 to Regulatory Limit .01. **(See Attachments 47, 47a, 47b, 47c, & 47d)**

Listing of Actual/Apparent Violations: The list below is the violation of Law, Rule, or Regulation, Specific Danger to Public Health or Safety, Abuse of Authority at the Federal Prison Industry Factories, USP Atwater, California, FCI Elkton, Ohio, FCI Texarkana, Arkansas, FCI Marianna, Florida, FCI LaTuna, Texas, and USP Lewisburgh, Pennsylvania

1. Program Statement 1600.08, Chapter 2, Page 16, Section 3 - Ventilation is the process of supplying or removing air by natural draft or mechanical means, to or from any space.
2. Executive Order 12196 and 29 CFR 1960 which states - that Safety Officials shall have sufficient authority to correct unsafe and unhealthy working conditions.
3. Program Statement 1600.08, Chapter 1, Page 4, Section g - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights under Executive Oder 12196, 29 CFR 1960, or for participating in the Bureau's Safety and Environmental Health Program.

Action Planned or Should be Taken:

Disciplinary action against Ms. Aragon, Mr. Stahley, and Mr. Booth for failure to comply with ventilation requirements to reduce air contaminants and allowing an unsafe and unhealthful work environment. This placed the staff, inmates, and staff families health at risk.

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

May 12, 2003

MEMORANDUM FOR JANICE ARAGON, FACTORY MANAGER

FROM: L. A. Smith, Safety Manager

SUBJECT: Ventilation

I am very concerned with the build-up of airborne dust generated by the disassembling of computer equipment. Currently, the UNICOR factory has a swamp cooler system, which is not designed to exhaust airborne particulate's. The current system brings fresh air in from the outside, but recycles the air within the factory itself. This causes the airborne particulate's to remain inside the factory. Respirable dust can become a health concern for staff and inmate workers over a period of time or immediate to staff and inmate workers with preexisting respiratory health concerns. Respirable dust is airborne dust in sizes capable of passing through the upper respiratory system to reach the lower lung passages. The current masks utilized in the factory is identified as a nuisance mask. This type of mask is used for comfort not protection from airborne particulate's (dust). A particulate filter respirator, is an air purifying respirator, commonly referred to as a dust or fume respirator.

The other concern with the amount of airborne particulate's (dust) being generated may affect the food and drink being prepared and served in the factory. This may become a concern with food contamination. As a precautionary measure the Safety Department recommends an respirable air sampling be conducted. Also, an exhaust ventilation system be installed to meet the current needs of the UNICOR Recycling factory and meets the American National Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems.

If I can provide any further assistance, please do not hesitate to let me know.

cc: AW(C) AW(I&E) UNION Safety File

Attachment # 60

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

December 9, 2003

MEMORANDUM FOR THOMAS STAHLEY, ASSOCIATE WARDEN (I&E)

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Ventilation**

As previously discussed I have addressed the build-up of airborne dust generated by the disassembling of computer equipment. Currently, the UNICOR factory has a swamp cooler system, which is not designed to exhaust airborne particulate's. The current system brings fresh air in from the outside, but recycles the air within the factory itself. This causes the airborne particulate's to remain inside the factory. Especially during the winter months when the swamp coolers are shut-down.

Also, respirable dust can become a health concern for staff and inmate workers over a period of time or immediate to staff and inmate workers with preexisting respiratory health concerns. Respirable dust is airborne dust in sizes capable of passing through the upper respiratory system to reach the lower lung passages. The current masks utilized in the factory is identified as a nuisance mask. This type of mask is used for comfort not protection from airborne particulate's (dust). A particulate filter respirator, is an air purifying respirator, commonly referred to as a dust or fume respirator.

Finally, the other concern with the amount of airborne particulate's (dust) being generated may affect the food and drinks being prepared and served in the factory. This may become a concern with food contamination. As a precautionary measure the Safety Department recommends an respirable air sampling be conducted. Also, an exhaust ventilation system should be installed to meet the current needs of the UNICOR Recycling factory and meets the American National Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems.

If I can provide any further assistance, please do not hesitate to let me know.

cc: AW(C) Factory Manager UNION Safety File

Attachment #60a

Allegation 6 Response:

The Food Service was designed to allow toxic materials to easily become cross-contaminated with the food prepare in the factory.

Findings Response:

There nothing in the OSHA 29 CFR 1910.141, which states the air sampling is required to determine toxic material limits. The wipe sampling it self identified high to low detectable levels of cadmium, barium, and lead throughout the factory

The September 2004, technical assist visit conduct by Mr. Korbelak showed two wipe samples were collected in the food service/dining, which is in an open corner of the UNICOR factory. One wipe sample was taken at the dinning table that is used by staff and inmates, which had low but detected levels of barium and cadmium. The other wipe sample was taken from a smooth slanted top of a cabinet along the wall that had low but detected levels of barium, cadmium, and lead. I asked Mr. Korbelak during the Office of Internal Affairs interview why would we use wipe sampling if this type of sampling not covered by OSHA. Mr. Korbelak told me, it allows you to identify containment's on work surfaces, floors, walls, and equipment that sir sampling wouldn't detect. I asked Mr. Korbelak, if the wipe samples taken identified any hazardous metals at the work stations and other places in the factory. Mr. Korbelak replied, Yes. I then asked Mr. Korbelak, that we can assume over a period of time at low concentrations to hazardous metals by the inmates touching this at their work stations or blow back into the air with their air guns, they could ingest and inhale the hazardous metals to potentially raise their blood and urine levels. Mr. Korbelak told me, Yes. **(See Attachments 49 & 49a)**

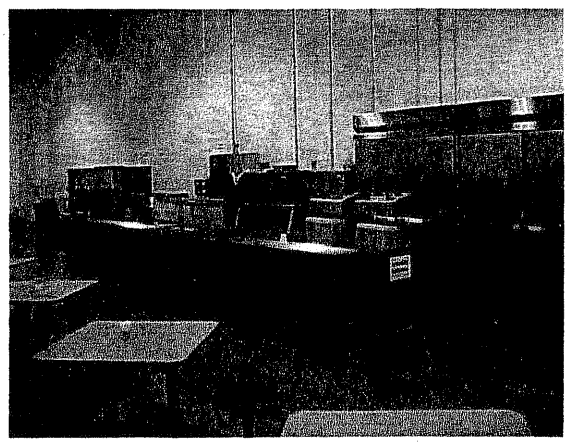
Mr. Sthaley and I both brought to the attention of Mr. O'Brien, that the open food service would cause health concerns because of the toxic material contained in the CRT's. We also, brought to his attention that we all agreed to have an inclosed food service operation. Mr. O'Brien told use, that an inclosed food service would cause security concerns and after speaking with Mr. Novicky the cost of building an inclosed food service was greater then UNICOR wanted to pay.

Conclusion Response:

I think it should be made clear that even the food service dinning table had low detected barium and cadmium levels and the cabinet hand low but detected barium, cadmium, and lead levels, this equipment is made of flat metal surfaces, which by cleaning the surfaces with sanitize soap should of shown no detected levels of hazardous metals. The disassembling area (Production Line) tables are made out of wood, which have a granule surface, which allows cleaning the surface much harder to prevent hazardous metal build-up. The wipe sample conducted from the unbroken monitor shows that monitors during shipping are being broken and the hazardous metals in the monitors are contaminating the unbroken monitors. The air hoses, air rachet's, and the handling of the broken monitors allows the metals to become airborne.

The wipe samples taken July 2002 through September 2004, indicated high levels of toxic materials, which again the standard doesn't request air sampling or wipe sampling to be conducted to determine the amount of toxic material. The standard is very clear, no employee shall be allowed to consume food or beverages in a toilet room nor in any areas exposed to a toxic material, which the hazardous metals in the CRT's are classified as toxic materials.

The UNICOR Food Service area, looking from the Changing Room.



UNICOR's Food Service Serving Line from theProduction Lines

I think Mr. Korbelak said it eloquently, though hand samples were among the lowest levels sampled, surfaces with the higher levels of metals could pose a cross-contamination exposure potential to workers through ingestion.

If the budgetary restraints were a major factor in designing a closed food service operation at USP Atwater and other UNICOR factories Bureau-wide. This is supported by the Addendum to the investigative report dated August 1, 2005. Mr. Schwalb, Assistant Deputy Director of UNICOR states, cost estimates of isolating food service/dinning areas ranged from $110,000 to $250,000 per facility, which was determined to be too costly relative to any efficiencies gained by maintaining internal food service/ dinning areas, which this was the same issue beside security concerns at the time they built USP Atwater's food service/dinning area.
(See Attachment 61 & 61a)

On May 9, 2005, samples were taken of the swamp cooler filters on the UNICOR factory

U.S. Department of Justice

Federal Bureau of Prisons

CENTRAL OFFICE
WASH. D.C.
U.S. OFFICE OF
SPECIAL COUNSEL

2005 AUG -4 PM 3:17

Washington, DC 20534

August 1, 2005

The Honorable Scott J. Bloch
Special Counsel
Office of the Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: OSC File No. DI-04-2815; ALLEGED VIOLATION OF LAW, RULE, OR REGULATION AND SPECIFIC DANGER TO PUBLIC HEALTH OR SAFETY AT THE FEDERAL PRISON INDUSTRY FACTORY, ATWATER, CALIFORNIA

Dear Mr. Bloch:

Please find enclosed an addendum to our Report of Investigation dated June 13, 2005, pursuant to the OSC case referenced above. The addendum provides additional information requested by your staff. Please let me know if we can be of any further assistance.

Sincerely,

Kathleen M. Kenney
Assistant Director/General Counsel

Enclosure

Attachment #1

a toilet room nor in any area exposed to a toxic material." Based on the low levels of metals (toxic material)[2] in the food service/dining area, it is recommended that the food service/dining area be isolated from the factory operations. Besides physically separating the food service/dining area from the factory with doors, walls, and ceiling surfaces, isolation from factory air/ventilation would also be required to prevent deposition of metals on surfaces in the food service/dining area.

The USP Atwater Warden reviewed the report during the week of December 6, 2004, coincidentally the same week of the first interviews in the current investigation. The Warden discussed this and other findings with FPI General Counsel, who was at USP Atwater that week. FPI General Counsel recalled she had been given an unofficial copy of the report by BOP Safety officials on December 3, 2004, just prior to its issuance to the Warden, and had verbally communicated the findings generally to the FPI Assistant Director. Upon the return of FPI General Counsel to FPI headquarters on December 13, 2004, more details about that and other findings were verbally communicated to the FPI Assistant Director.

The FPI Assistant Director subsequently directed FPI staff to determine the costs of isolating food service/dining areas from factory operations at all facilities. Cost estimates of isolating food service/dining areas ranged from $110,000 to $250,000 per facility, which was determined to be too costly relative to any efficiencies gained by maintaining internal food service/dining areas. Thus, on January 26, 2005, the FPI Assistant Director sent a memorandum to all BOP Regional Directors following a telemessage to them, which states in pertinent part:

> . As we discussed, some problems and issues have arisen associated with this initiative. Accordingly, it has been determined that this effort is not feasible. Moreover, any present plans to establish such food service areas in newly activating factory locations will be discontinued. All existing food service operations will be discontinued no later than February 28, 2005, unless you and I make a mutually agreeable exception.

---

[2] Earlier in his report, the Industrial Hygienist discussed taking two wipe samples in the food service area, one of which indicated "low, but detected, levels of barium and cadmium"; the other indicated "low, but detected, levels of barium, cadmium, and lead."

roof. These swamp coolers are approximately twenty-five (25) feet above the disassembling areas (Production Lines) and produce approximately 260 filters annually to be replaced and through into the general waste stream, into the local county dumps.

NOTE: The test conducted was RCRA 13 Test Pollutant Metals and the NIOSH standards for Pollutant Metals, which showed the following metals above the regulatory limits: **1.** Metals-Antimony Concentrations 9.1 mg.kg to Regulatory Limit 5.0, **2.** Metals-Arsenic Concentrations 5.3 mg/kg to Regulatory Limit 2.0, **3.** Metals-Cadmium Concentrations 2.6 mg/kg to Regulatory Limit 1.0, **4.** Metals-Chromium Concentrations 35 mg/kg to Regulatory Limit 2.5, **5.** Metals-Copper Concentrations 120 mg/kg to Regulatory Limit 5.0, **6.** Metals-Lead Concentrations 52 mg/kg to Regulatory Limit 2.5, **7.** Metals-Nickel 28 mg/kg to Regulatory Limit 5.0, **8.** Metals-Zinic Concentrations 2200 mg/kg to Regulatory Limit 5.0, and **9.** Metals-Mercury Concentrations 0.51 to Regulatory Limit .01. **(See Attachments 47, 47a, 47b, 47c, & 47d)**

Listing of Actual/Apparent Violations: The list below is the violation of Law, Rule, or Regulation, Specific Danger to Public Health or Safety, Abuse of Authority at the Federal Prison Industry Factories, USP Atwater, California, FCI Elkton, Ohio, FCI Texarkana, Arkansas, FCI Marianna, Florida, FCI LaTuna, Texas, and USP Lewisburgh, Pennsylvania

1. OSHA 29 CFR 1910.141(g)(2) Eating and Drinking areas - No employee shall be allowed to consume food or beverages in a toilet room nor in any area exposed to a toxic material.
2. Executive Order 12196 and 29 CFR 1960 which states - that Safety Officials shall have sufficient authority to correct unsafe and unhealthy working conditions.
3. Program Statement 1600.08, Chapter 1, Page 4, Section g - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights under Executive Oder 12196, 29 CFR 1960, or for participating in the Bureau's Safety and Environmental Health Program.
4. OSHA 1910.1200 Hazardous Communication - The purpose of this section is to ensure that the hazards of all chemicals produced or imported are evaluated, and that information concerning their hazards is transmitted to employee and employees.

Action Planned or Should be Taken:

Disciplinary action needs to be taken towards Federal Prison Industry and Safety and Health Division management officials, Mr. Schwalb, Mr. Novicky, Ms. Keidel, Mr. V. Smith, Mr. Aragon, Mr. Lee, Mr. Stahley, and Mr. Luna, for not working together to discuss the food service/dinning areas being build in factories with toxic materials. If the Office of Internal Affairs investigation report is accurate about air sampling being necessary to establish the toxic material limits, then why would Federal Prison Industries and the Agency remove these food service/dinning areas, which appears to have been a waste fraud and abuse of taxpayers dollars in the first place and cost.

Allegation 7 Response:

The other Federal Prison Industry Computer Recycling factories were in noncompliance

from 1994 through 2005. There were not compliance program written nor implemented for neither of the recycling factory until June 2003.

Findings Response:

The Office of Internal Affairs failed to conduct a site visit during this investigation, which UNICOR staff that work the glass breaking operation at FCI Elkton, FCI Marianna, FCI Texarkana, FCI LaTuna, and USP Lewisburgh, should of been given the opportunity to be interviewed. The current Federal Prison Industry Superintendent of Industries and Factory Manager are new to FCI Elkton. The Safety staff are to scared to provide the truth of how the glass breaking operation operated and how the staff and inmates were subjected to the hazardous metals daily. When one of the UNICOR staff went to the safety department to request a CA-2 and a copy of the sampling results conducted on the glass breaking booth, the Safety Specialist told the employee, you don't want to get involved, it's only going to bring you trouble.

Federal Prison Industries Management Officials lied to staff and inmates about the hazards associated with the CRT's from 1994 through 2005. Mr. Aragon who ran the recycling factory at FCI Elkton informed his staff that he checked on this and there is no hazards or danger to anyone working with CRT's. Federal Prison Industries continued the glass breaking operation in the warehouse until USP Atwater's air sampling, personal air sampling, and wipe sampling results came back three time the OSHA exposure limits, then FCI Elkton shut down the glass breaking operation and moved it into the factory. This took place in late 2002 or beginning of 2003, not 2001. **(See Attachments 62, 62a, & 62b)**

Also, you want to talk about corruption, conspiracy, obstruction, and concealment of criminal actions. After FCI Elkton's Local Union filed a grievance against the Bureau of Prisons for exposure to staff, Mr. Phil Glover, CPL33 President, went to FCI Elkton and had a meeting between the Chief Executive Officer, Local Union President and himself. Mr. Glover highly recommended for the Local President to release the grievance without prejudice and have all staff members involved report to the Safety Department and file CA-2's. If there is no safety or health concerns associated with the CRT's and staff weren't exposed to any harmful metals, then why Chief Executive Officer and the National President go out of their way to recommend staff to file CA-2 for illness or disease? **(See Attachments 63, 63a, & 63b)**

Federal Prison Industries opened a computer recycling program at Federal Correctional Institution (FCI), Marianna, Florida in 1994. This operation did originally have a glass breaking operation when FCI Elkton opened in 1997. The Warden at FCI Marianna began sending the CRT's to FCI Elkton, because he/she was worried that the hazardous metals in the CRT's would cause health concerns with the female inmates reproductive system. The additional CRT's began rolling in at FCI Elkton by the tractor trailer loads. According to Toxicology, OSHA, and EPA standards males reproductive systems are equally effected when exposed to the hazardous metals, which causes a lower sperm count.

OSHA inspected FCI Elkton approximately June of 2003, which they notified Federal Prison Industries and the Agency one week prior to entering the institution to conduct their

YAHOO! MAIL

Print - Close Window

Date: Sun, 18 Sep 2005 21:22:03 -0700 (PDT)

From: [redacted]>

Subject: Fwd: Re: UNICOR Grievance

To: "Leroy Smith" <leroy3409@sbcglobal.net>

Note: forwarded message attached.

Do You Yahoo!?
Tired of spam? Yahoo! Mail has the best spam protection around
http://mail.yahoo.com

Forwarded Message

Date: Thu, 15 Sep 2005 13:57:16 -0400

From: [redacted]

To: [redacted]

Subject: Fwd: Re: UNICOR Grievance

Forwarded Message

Date: Wed, 14 Sep 2005 16:44:08 -0400

From: "Charles Carter" <VIP1718@bop.gov>

To: [redacted]

Subject: Re: UNICOR Grievance

Plain Text Attachment

[redacted]. It is simple, When we first starting breaking monitors in the spring of 1999, I along with [redacted] and [redacted] were told about the hazards involving the breaking of the cathode ray tubes(CRT'S). I went to Aaron Aragon who was in charge of the recycling factory with this concern. He stated "I have already checked on this and there is no hazard or danger to anyone". For years we took the word of our fellow employee and person in charge and we broke those monitors and we were exposed to all these harmful chemicals. Only until Atwater's incident, Elkton then shut down the glass factory. Fact #1. Aragon lied about the hazards. If he did check as he stated then he intentionally put us at risk. If he lied and did not check before or after we brought this concern to him, he is still responsible, either way he is responsible for putting us in this hazardous environment... and FOR YEARS-- ALL for profit. Fact #2. My doctor told me I will be lucky if it does not effect
me in the future.

Now [redacted], I would think that is almost criminal. Aragons boss, Larry Novciky should also have to answer for this. The buck stops with those two. Aragon made a lot of money for UNICOR during that time and if he would have had to shut down and establish a factory that would have

Attachment #62

been
safe in the destruction on the CRT's that would have been a lot of time and money. His production would have been down and this fast money would not have happened, therefore he would not be where he is at today.

Putting your fellow staff members in danger, all for the profit....how about that!!!

Also the Director's investigation in the PEER paper. Someone is pulling the wool over his eyes in reference to Elkton.

This is not really about our blood levels, etc...thats too late. Its about being exposed for all those years intentionally and without regard
for the health of bureau staff.

I want my UNION to pursue this. I want answers, displinary action, and compensation. I am sure Karlton Newland and Will Johnston would also like this action to take place. They were also lied to and put in danger.

Charlie

Charles R. Carter
Counselor, Unit #3
USP Victorville, CA
530-760-5000 ext. 1506

>>> [redacted] 9/14/2005 6:10:35 AM >>>
If you would like to respond back to me and let me know if you want the Union to pursue this issue I would appreciate it. As for [redacted] We meaning [redacted], and [redacted] requested that you provide the Union with
supporting documents and you failed to do so, and now you state that the
Union did nothing. I would like to explain why things were done how they were handled. Mr. Phil Glover which was the CPL33 President, (my boss with the Union) looked at the entire case file and we had a meeting with the Warden. Since there was no documentation supporting high blood levels with the staff members working in the Unicor department he highly recommended to release the grievance without prejudice and have all staff members involved report over to the safety department to fill out the proper paperwork. When John Rice and me attended the National Convention last week we spent a few hours with two
Unicor individuals's to discuss your issues and we intend to pursue this
aggressively. I will not be receiving anything in this case Steve and I
will see no benefit with this issue. In addition the Union is going to receive supporting documents from staff members that don't even work at Elkton So you tell me what you want the Union to do. Thank you for your concern in this matter.

>>> [redacted] 9/14/2005 8:40:34 AM >>>

Attachment #62a

Charlie,
I am sure that everyone that ever set foot in UNICOR is jumping on the bandwagon now. As for the Union, they weren't there then, but now that it looks like some people may benefit from it I am sure they are taking a strong stance on it.
I myself have no use for the Union in this instance as they didn't offer any assistance prior to this but instead worried about getting very important Rolex watches. And failed to reply to emails regarding "our" exposure. Typical....
I have my own attorney because I'm sure those that were not affected will try to get in on it as a class action. To which they have no claim.

>>> Charles Carter 09/12 4:12 PM >>>
Hey [redacted], Is this now a national grievance? Should be!!!! Someone has got to answer and pay for this. Don't let this slip away. The director of the BOP has stated in that article in PEER that staff were put in hazardous conditions, yet he mentioned little about Elkton and basically
stated it was a learn as you go type deal at Elkton. The person who did
the investigation for him is pulling the wool over his eyes. This will not get it. Thanks,

Charles R. Carter
Counselor, Unit #3
USP Victorville, CA
530-760-5000 ext. 1506

Attachment #42b

inspection. Federal Prison Industries shut down the factory and had the staff and inmate workers cleaning the factory and glass breaking area one week prior to the OSHA inspection. Federal Prison Industries has denied UNICOR staff who worked the glass breaking operation or walked through this area on a daily basis from 1997 through 2002, an opportunity to have their blood and urine tested to determine their exposure level, refused to pay for the tests, and denied them time during normal working hours to have the tests taken. **(See Attachment 63)**

The May 22, 2003, air sampling and personal air sampling results indicate that cadmium was above the OSHA Permissible Exposure Limit (PEL). This was the first valid test taken at FCI Elkton, which was taken in a controlled environment. The correspondence from the Safety Manager at FCI Elkton advise the UNICOR staff that test results were slightly elevated, although there chances of being exposed above normal is remote. The Safety Manager then told them, they would need to get a CA-2 and report to their physician for a blood test. The Safety Manager's correspondence makes it clear that staff were not provided proper Personal Protective Equipment, especially a respirator. **(See Attachments 64, 64a, & 64b)**

Federal Prison Industries at USP Atwater, was throwing the booth filters in the general waste stream, which would be deposited in the county landfill. The Safety Department advise Federal Prison Industries that the filters in the booth need to be analyzed by an outside certified Lab, which they will need to conduct a Toxic Characteristics Leaching Procedure (TCLP) to determine disposal requirements according to EPA on May 1, 2002. The TCLP results identified large concentrations of lead, cadmium, and barium, which exceeded EPA 40 CFR 261.2 for hazardous waste disposal purposes on July 1, 2002.

Federal Prison Industries at FCI Elkton have been storing their glass breaking booth filters and disposable clothing in the UNICOR warehouse without conducting a TCLP to determine if the material needs to be disposed of as hazardous waste. Federal Prison Industries conduct a TCLP after storing this material for 2 ½ years. The results of the TCLP exceeded the EPA standards for hazardous waste. Federal Prison Industries then began placing the filters and disposable clothing in tractor trailers. **(See Attachments 65, 65a, 65b, 65c, & 65d)**

Federal Prison Industries agrees they opened their computer recycling programs based of analytical data and observation of an non-governmental agency without conducting their own health risk assessments. This is flagrant disregard to OSHA and EPA standards to minimize their cost, which placed staff and inmate workers safety and health endanger. Dublak glass was one of the companies FPI relied on, which didn't come into play until later, which I will display photo's similar in the was FCI Elkton was running the galss breaking operation. Also, the only other company back then was Hosfelt Electronics and a gentleman name Terry was the person who initial informed the UNICOR staff about the hazards associated with the CRT's.
(See Attachments 66 & 66a)

Federal Prison Industries and the Office of Internal Affairs talk about the Safety Manager conducting in house air sampling and wipe sampling at the glass breaking operation, which these testing results were questionable and could not be validated by Mr. Korbelak. Also, we have staff from FCI Elkton, that clearly state their were no tests conducted during the early years of the glass breaking operation, which testing only began in 2003 or beginning of 2004. Then staff weren't

UNICOR

Federal Prison Industries, Inc.
Data Services
8730 Scroggs Road
Elkton, OH 44415
Phone: (330) 424-7074
Fax: (330) 424-7324

Date: June 25, 2003

Reply To: Sam Pratt, Superintendent of Industries and Education

To: Mark A. Bezy, Warden

Subject: Corrective Action Plan, Glass Breaking Booth

OCCU-TECH, Inc. conducted an Industrial Hygiene Survey of the cathode ray tube processing procedure at FCI Elkton on May 22, 2003. Concentrations of Barium, Beryllium, Cadmium and Lead were assessed in the sampling. The data collected indicated that the Cadmium level was the only point of concern, being slightly over the permissible exposure limit set by (OHSA) Occupational Safety and Health Administration and (ACGIH) American Conference of Governmental Industrial Hygienist.

To reduce Cadmium levels, the following recommendations were made by OCCU-TECH and have been implemented.

- Review material handling and personal hygiene procedures and incorporate into a Cadmium Exposure Control Plan.
- Institute procedures to comply with 29CFR1910.1027, the OSHA standard for Cadmium.
- Reposition workers inside the booth so that they are perpendicular to the airflow.
- Inmates should don a new Tyvek suit at the beginning of each work interval; suits should not be reused after breaks and/or lunch.
- Do not allow dry sweeping of areas. Vacuum all areas with HEPA filtered vacuums.
- Do not allow dumping of Gaylord boxes. Vacuum all areas with HEPA filtered vacuums.
- Modify Gaylord boxes to allow additional airflow.

Attachment #65

YAHOO! MAIL

Print - Close Window

Date: Wed, 14 Sep 2005 20:54:17 -0700 (PDT)

From: [redacted]

Subject: Fwd: Blood Test

To: "Leroy Smith" <leroy3409@sbcglobal.net>

Note: forwarded message attached.

Yahoo! Mail - PC Magazine Editors' Choice 2005
http://mail.yahoo.com

Forwarded Message

Date: Wed, 14 Sep 2005 14:39:19 -0400

From: [redacted]

To: [redacted]

Subject: Fwd: Blood Test

Forwarded Message

Date: Mon, 30 Jun 2003 13:16:27 -0400

From: [redacted]

To: [redacted]

Subject: Fwd: Blood Test

Forwarded Message

Date: Mon, 30 Jun 2003 13:16:07 -0400

From: "Derrek L. Williams" <ELK0300.ELKADM1.ELKDOM1@central.unicor.gov>

To: "Charles Carter" <ccarter@central.unicor.gov>, "William Johnston" <ELK0139.ELKADM1.ELKDOM1@central.unicor.gov>, "Karlton Newland" <ELK0201.ELKADM1.ELKDOM1@central.unicor.gov>, "Sheri Saulsberry" <ELK0241.ELKADM1.ELKDOM1@central.unicor.gov>

CC: "Brian Hertel" <ELK0002.ELKADM1.ELKDOM1@central.unicor.gov>, "Sam Pratt" <ELK9311.ELKADM1.ELKDOM1@central.unicor.gov>

Subject: Blood Test

Plain Text Attachment

Hey, guys as you know the glass breaking operation was tested and had some slightly elevated readings within that inclosed area. Although your chances of being exposed to anything above normal is remote, it is my recommendation that you guys have a blood test done as a precautionary measure.

You will need to get a CA-2 from us, and then report to your physician for a blood test. What you will want to be tested for is Beryllium,

Attachment #64a

Cadmium and Lead. We will need copies of the results.

Any time away from work, will require you to use S/L, A/L or LWOP until worker's comp, directs us further.

This in not mandatory, but highly recommended.

If you have any questions, contact me at ext. 3173.

Attachment #646

From: Jeff Kyler
To: Eister, Bob
Date: 5/4/2005 11:27:23 AM
Subject: Fwd: T clip testing of filters

I will need to make these arrangements as soon as I can.

>>> Victor Considine 5/4/2005 10:38:30 AM >>>
Jeff,

I received the "T" clip tests for the filters and they will need to be disposed of as hazardous waste. I am not surprised as the filters are "doing their job" collecting the lead dust.

Listed below is our suggestion for your removal. The filters will need to placed in drums, but you can compact them into one or two drums- not sure how many filters you have.

Please call me with any questions or concerns.

Hazard waste disposal:

Carl Frank 440-992-7906
Penn Ohio Hazard Waste Management

Attachment # 65

YAHOO! MAIL

Print - Close Window

Date: Wed, 14 Sep 2005 21:12:37 -0700 (PDT)

From: [redacted]

Subject: Fwd: Re: Hazardous Filters

To: "Leroy Smith" <leroy3409@sbcglobal.net>

Note: forwarded message attached.

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Date: Thu, 05 May 2005 15:25:34 -0400

From: [redacted]

To: [redacted]

Subject: Fwd: Re: Hazardous Filters

Forwarded Message

Date: Thu, 05 May 2005 14:43:03 -0400

From: "Derrek L. Williams" <dlwilliams@bop.gov>

To: "Paul A. Robinson" <parobinson@bop.gov>, "Victor Considine" <vconsidine@bop.gov>, "Bob Eister" <beister.MC_PO1.DCSD@central.unicor.gov>, "Jeff Kyler" <jkyler.MC_PO1.DCSD@central.unicor.gov>

CC: [redacted]

Subject: Re: Hazardous Filters

Plain Text Attachment

For future reference, the waste containers that you guy come in contact with must be clearly labeled with the words "Hazardous Waste", the contents of the container, and the date that the waste are accumulated in the container.

Containers must be kept in good condition, we also have to have personnel trained in the proper handling of hazardous waste. If UNICOR is going to generate this hazard often, you may want to get someone in UNICOR trained.

D.L. Williams, Safety Manager

>>> [redacted] 5/5/2005 2:34:40 PM >>>
As we have become aware and the testing is complete. We need to treat the used hepa filters etc that are associated with the glass breaking operation as hazardous waste.

FCI Elkton Hazardous waste coordinator is [redacted], Garage Foreman.

Attachment # 65a

Due to the current negotiations for their removal and that they will be removed within 30 days, they can be temporary stored in a trailer. This trailer must be removed from the dock area once it is loaded as to keep people away.

Each box must be labeled " Hazardous Waste- Lead Dust" and they must be inventoried for accountability purposes.

In the future, when filters are changed, they can be placed in the hazardous waste storage building and this will be coordinated by [redacted].

Attachment #656

YAHOO! MAIL

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Date: Wed, 14 Sep 2005 20:45:35 -0700 (PDT)

From: [redacted]

Subject: Fwd: Filter Procedures

To: "Leroy Smith" <leroy3409@sbcglobal.net>

Note: forwarded message attached.

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Date: Wed, 14 Sep 2005 14:50:54 -0400

From: [redacted]

To: [redacted]

Subject: Fwd: Filter Procedures

Forwarded Message

Date: Thu, 25 Aug 2005 10:15:55 -0400

From: "Jeff Kyler" <jkyler@central.unicor.gov>

To: "Karlton Newland" <knewland@central.unicor.gov>, "William Johnston" <wjohnst@central.unicor.gov>

Subject: Filter Procedures

Plain Text Attachment

The filters that come to you from the FCI for Penn Ohio can now be placed in the hazardous room and free up the trailer they are in now. This needs to be coordinated through Paul Robinson, he has the keys to the hazardous room. All items placed in the room must be logged in and logged out. When you receive one or more of those special boxes from the FCI they should be removed by Penn Ohio within 30 days. Try not to go longer than that. If you have any questions, please get with me or Victor Considine.

Thanks

Jeff

Attachment #65

YAHOO! MAIL

Print - Close Window

Date: Wed, 14 Sep 2005 20:51:51 -0700 (PDT)

From: [redacted]

Subject: Fwd: Glass Booth Filters

To: "Leroy Smith" <leroy3409@sbcglobal.net>

Note: forwarded message attached.

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http://mail.yahoo.com

Forwarded Message

Date: Wed, 14 Sep 2005 14:45:13 -0400

From: [redacted]

To: [redacted]

Subject: Fwd: Glass Booth Filters

Forwarded Message

Date: Wed, 08 Jun 2005 13:37:03 -0400

From: "Jeff Kyler" <jkyler@central.unicor.gov>

To: "Christopher Carusso" <ccarusso@central.unicor.gov>, "Karlton Newland" <knewland@central.unicor.gov>, "William Johnston" <wjohnst@central.unicor.gov>

CC: "Jeff Kyler" <jkyler@central.unicor.gov>

Subject: Glass Booth Filters

Plain Text Attachment

The following procedures need to be followed in dealing with the old filters from the glass booth.

1. All old filters need to be sent to the FCI.
2. Store the filters in a trailer that has no other product in it until they can be transferred to the proper boxes for disposal.
3. Place the old filters in the proper boxes for disposal.
4. The transfer to the new boxes will be conducted in the glass booth in the area they break the glass not back by the HEPA filters.
5. If the old HEPA filters do not fit, they need to be compacted by hand in the glass booth until they do fit in the disposal boxes.
6. Once all the filters have been properly placed and sealed in the boxes, I need to be notified in order to arrange transportation.
7. One month prior to the changing of the filters in the glass booth, we need to order new disposal boxes. The filters need to be placed in these boxes when the change is conducted. This will expedite the process and remove them as soon as possible.

If you have any questions, please contact me as soon as possible.

Attachment # 65d

YAHOO! MAIL

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Date: Wed, 14 Sep 2005 21:03:13 -0700 (PDT)

From: [redacted]

Subject: Fwd: Recycling Issue

To: "Leroy Smith" <leroy3409@sbcglobal.net>

Note: forwarded message attached.

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Forwarded Message

Date: Wed, 14 Sep 2005 09:51:41 -0400

From: [redacted]

To: [redacted]

Subject: Fwd: Recycling Issue

Forwarded Message

Date: Mon, 12 Sep 2005 17:32:47 -0400

From: "Charles Carter" <VIP1718@bop.gov>

To: [redacted]

Subject: Recycling Issue

Plain Text Attachment

Hey [redacted] Did you guys see the directors investigation/response in PEER. If not go to the PEER website. Find the article PEER wrote. Got
to the bottom of the article and read the directors investigation.

Read allegation #7. The director states in the beginning the method of CRT destruction was learned and observed from another non-government recycling company as well as a glass processing company and neither of them conveyed any concerns.

Dublak glass did not come into play until later, so I do not know what the directors talking about. I do not even know if they new how we were
breaking the glass. The only company back then was Hosfelt Electronics and Terry is the one that told us about the hazards. The director also mentioned some other stuff in this allegation that I know did not happen. They are making it seem like they caught the hazards and took appropriate action . Only after Atwater's issues and their safety manager doing the right thing did our factory put in that new updated glass booth.

Attachment #66

You guys read these two paragraphs and let me know what you think.

Charles R. Carter
Counselor, Unit #3
USP Victorville, CA
530-760-5000 ext. 1506

Attachment #66a

From: [redacted]
To: Carter, Charles; [redacted]
Date: 9/14/2005 6:51:34 AM
Subject: Re: UNICOR Grievance

Supporting documentation was provided to OSHA (who you told me to give it to) when they requested it from me. After I went to the Doctor and had to pay out of my own pocket for the testing. Which I was assured that I would receive compensation for ie: cost and time involved, but have seen neither. I could resend you your e-mails that stated such, if you want.
And, as for no one having high blood levels I am sure that it is the case since not everyone wanted to pay $400.00 out of their pockets to get tests done. (Did the Union fight for that after they were advised? another--- no reply) And those that did get the testing had low levels because they got the tests done after UNICOR covered themselves. Who answered for the years that it was done in an open area with no ventilation?
As for the OSHA inspection, it was pure BS. They shut the Factory down for a week, clean everything, then have them come in and test. And then tell us that they can't do anything about what was previously done.
At any rate, do what you feel is right. If you feel you did everything you could than I have no problem with that, but it appeared to me and others that this was not taken into serious consideration.
Have a great day.

>>> [redacted]. 09/14 9:10 AM >>>
If you would like to respond back to me and let me know if you want the Union to pursue this issue I would appreciate it. As for Steve We meaning Todd, John, and Myself requested that you provide the Union with supporting documents and you failed to do so, and now you state that the Union did nothing. I would like to explain why things were done how they were handled. Mr. Phil Glover which was the CPL33 President, (my boss with the Union) looked at the entire case file and we had a meeting with the Warden. Since there was no documentation supporting high blood levels with the staff members working in the Unicor department he highly recommended to release the grievance without prejudice and have all staff members involved report over to the safety department to fill out the proper paperwork. When John Rice and me attended the National Convention last week we spent a few hours with two Unicor individuals's to discuss your issues and we intend to pursue this aggressively. I will not be receiving anything in this case Steve and I will see no benefit with this issue. In addition the Union is going to receive supporting documents from staff members that don't even work at Elkton So you tell me what you want the Union to do. Thank you for your concern in this matter.

>>> [redacted] 9/14/2005 8:40:34 AM >>>
[redacted]
I am sure that everyone that ever set foot in UNICOR is jumping on the bandwagon now. As for the Union, they weren't there then, but now that it looks like some people may benefit from it I am sure they are taking a strong stance on it.
I myself have no use for the Union in this instance as they didn't offer any assistance prior to this but instead worried about getting very important Rolex watches. And failed to reply to emails regarding "our" exposure. Typical....
I have my own attorney because I'm sure those that were not affected will try to get in on it as a class action. To which they have no claim.

>>> Charles Carter 09/12 4:12 PM >>>
Hey [redacted] Is this now a national grievance? Should be!!!! Someone has got to answer and pay for this. Don't let this slip away. The director of the BOP has stated in that article in PEER that staff were put in hazardous conditions, yet he mentioned little about Elkton and basically stated it was a learn as you go type deal at Elkton. The person who did the investigation for him is pulling the wool over his eyes. This will not get it. Thanks,

Charles R. Carter
Counselor, Unit #3

attachment #63

allowed to review the testing nor air sampling results. **(See Attachment 67)**

These documents support this as an ongoing issue: On July 12, 2004, Mr. Korbelak stated, "USP Atwater's test results will have an effect on other institutions Bureau-Wide, which will effect older recycling programs and current recycling programs going online." He then stated, "FCI Elkton had conducted some testing, but he couldn't validate the testing, which they based their decision to conduct the glass breaking operations from the testing results from the company UNICOR sells their glass too, per a conversation with Mr. Larry Novicky. Mr. Korbelak also stated, the initial baseline testing conducted by USP Atwater appears to be the only reliable test results anyone has been able to present to him for review. **(See Attachment 7,7a, &7b and this is mentioned in my Affidavit) (These statements from Mr. Korbelak puts in question Allegation 4 Response)**

The information which OIA talks about already should of been disseminated to all other Institutions: On August 21, 2002, Mr. Korbelak reviewed the air sampling conducted July 24, 2002, which he required the following: 1. Personal air monitoring every 3 months for lead and every six months for cadmium, 2. provisions for hygiene facilities; showers, hand washing station, changing area, **3. medical monitoring/periodic blood tests,** 4. signs in regulated area, **5. labeling of shipping and storage containers, 6. respiratory protection and personal protective equipment**, and 6. training of workers. This information was sent to **Mr. Novicky** and forwarded to **Mr. Stahley, Mr. Steve Tussey, National Safety Administrator, Central Office,** and myself. **(See Attachment 16)**

At FCI Elkton staff over time began to develop an Bi-Polar at the age 30 or less and staff began to have legions on their legs etc, which Mercury has been known to cause Bi-Polar. This document talks about no ventilation for several years, which any staff member walking through the glass breaking area were potential exposed or staff that pulled the post for a day or week other then the normal glass breaking supervisors. Also, when staff again requested to have their blood and urine tested were denied by the Factory Manager. **(See Attachment 68)**

The Office of Internal Affairs mentions in their report, that the Factory Manager and inmate workers complained about silvery flacks accumulation after they moved the glass breaking operation to it's new location. This again implies that the staff and inmate workers were not being provided proper personal protective equipment (i.e. Respirator) and all staff and inmate workers are being exposed to hazardous metals. Also, the air sampling and personal air sampling was above the OSHA PEL for Cadmium. It then mentions, from May 2003 to June 2004, they didn't take any additional air sampling tests, which it appears because it's not mentioned the glass breaking operation continued. According to the OSHA guidelines they should of taken a second test **WITHIN 7 WORKING DAYS** or after any new environmental or mechanical controls being installed. Also, shower, hand washing area, clean room area should of been installed, according to the OSHA guidelines for Cadmium

YAHOO! MAIL

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Date: Wed, 27 Jul 2005 05:11:25 -0700 (PDT)

From: [redacted]

Subject: Exposure

To: leroy3409@sbcglobal.net

Mr. Smith.

I work at the Elkton ADP Factory. Our Factory is directly adjacent to the UNICOR Recycling Operation in the same building. At that time we were required to go to the Recycling area and stand posts etc.. When I began employment in UNICOR monitor breaking was done in an open area of UNICOR Recycling with no ventilation for several years. Since then, I and another co-worker have developed Bi-Polar Disorders. He has since resigned due to his medical condition. It has been established that exposure to heavy metals such as mercury can cause Bi-Polar disorders. I requested from my Factory Manager that I wanted to get a my blood levels tested and was denied. Since that time UNICOR at Elkton constructed a room where monitor breaking is being done. OSHA was called in after the fact and tests were done after the room was built. We were basically told by OSHA that they could not do anything about what was previously done only what is being done now.

I do believe that I was directly affected by the exposure to these hazardous metals. Please advise me on the appropriate steps that I need to take in reference to this situation. Feel free to contact me at this email address.

Thank you,

[redacted]

Attachment #68

YAHOO! MAIL

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Date: Tue, 28 Jun 2005 20:08:51 -0700

From: "Charles Carter" <charlie93535@verizon.net>

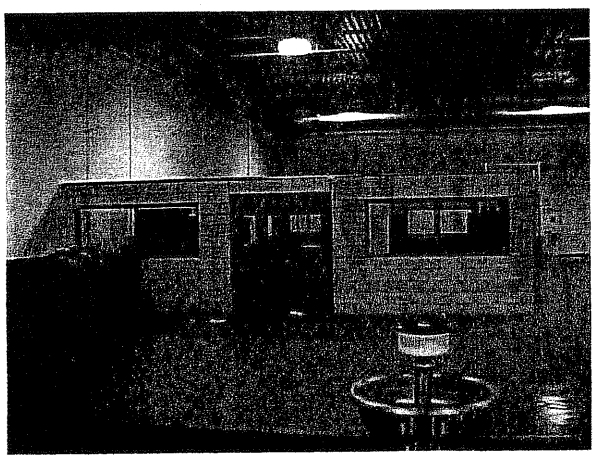
Subject: Hazardous Materials/Chemicals

To: "Leroy Smith" <leroy3409@sbcglobal.net>

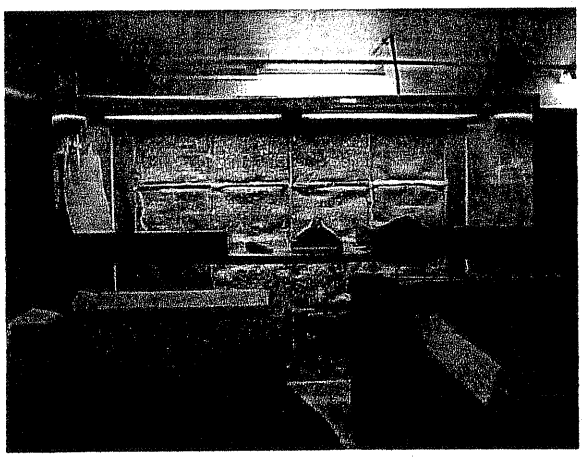
From November, 1998 to May 2004 I worked for Federal Prison Industries(UNICOR) at the Federal Correctional Institution(FCI) in Elkton, OH. I was one on the original staff members to help with the startup of the computer recycling factory and I worked in that factory for my entire time at FCI Elkton. In the latter part of 2003 or the beginning of 2004 and independent tester came in to UNICOR and tested for hazardous materials in the new recycling area. I was told this person was hired by UNICOR. I never saw in writing any results of that test. I was told by the superintendant of industries that every thing was safe. That was the only testing I ever saw in all those years.

Charles R. Carter
45465 25th St. East, Sp #4
Lancaster, CA 93535 HP/661-946-2856

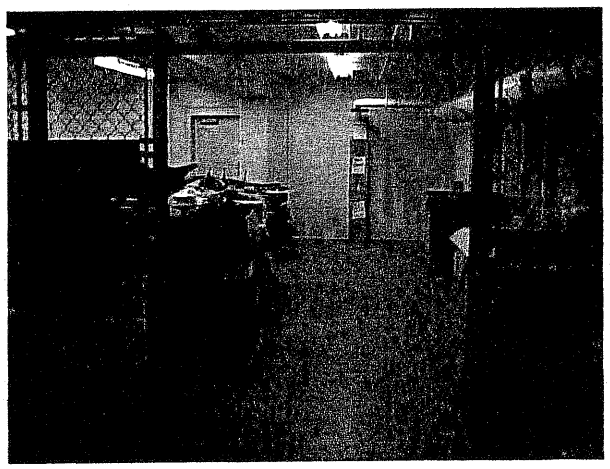
Attachment #67



This is a view of the inmate's changing room, looking from the Food Service area. The inmates cross-contaminated there close with other factory inmate jump suits as you see in this picture on the left side.

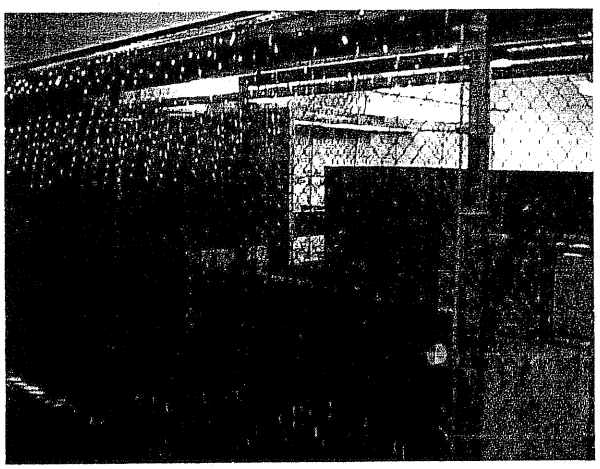


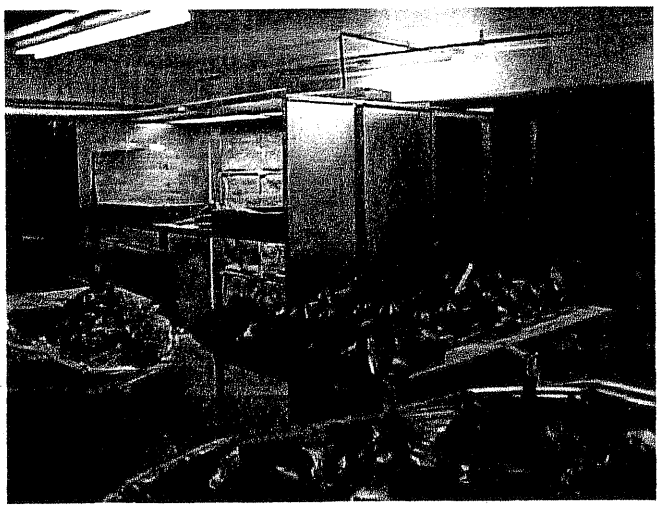
Looking directly into the Filter Booth from the entrance. Includes front view of Glass Breaking Table .



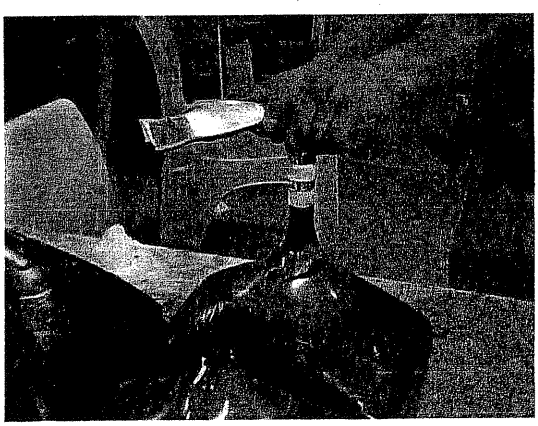
The entrance to the Glass Breaking Area (shown with entrance gate open).

Looking into the Glass Breaking Area from the main floor.

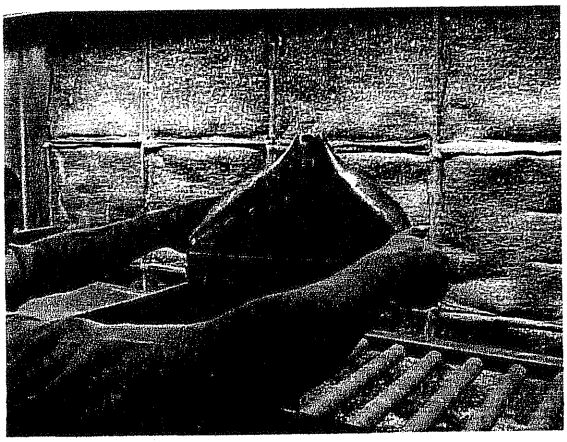




View of Glass Filtration Booth from back wall of Glass Breaking Area.



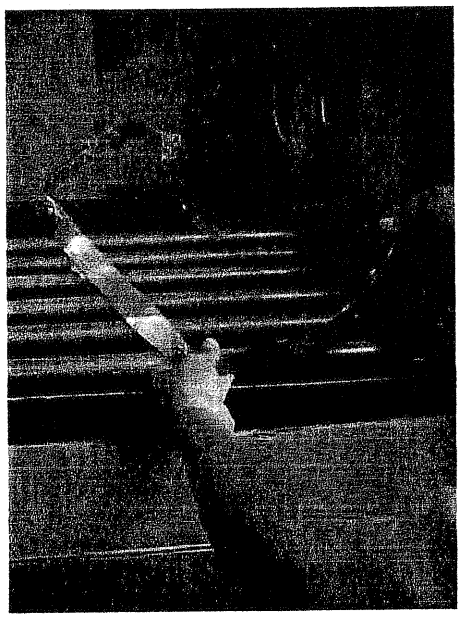
The gun is removed from the top of the tube.



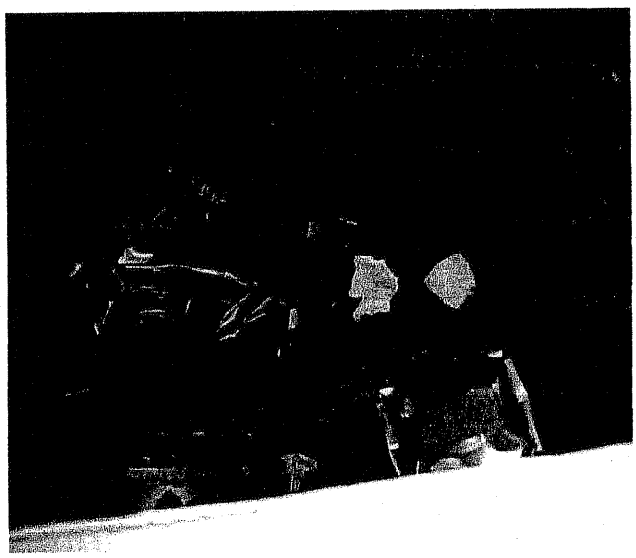
The tube is held over the right grating of the breaking table and dropped onto the grating. The panel glass breaks away from the frit and falls through the grating into the panel glass box.

The worker then turns the remainder of the tube over, holding the frit, and moves to the left side of the breaking table. There he drops the tube onto the rods, breaking the funnel glass away from the frit. The funnel glass falls through the rods and into the box below

An example of broken panel glass in the box.



The metal panel is removed, compacted, and sold to smelters.



Metal frit that lift over and sold to the recycling company

Also, there were no appropriate training provided to staff and inmate workers at FCI Elkton, FCI Texarkana, FCI Marianna, FCI LaTuna, or USP Lewisburgh. A memorandum from Charles Carter states, I never received any training for the handling of hazardous materials involved with Federal Prison Industries (UNICOR) computer recycling factory, which I worked for UNICOR the entire time. **(See Attachment 69, & 69a)** In June 2005, a correspondence from the Federal Prison Industries, Cental Office to the Jeff Kyler tells that FCI Elkton, UNICOR must conduct safety training that must be signed and dated by each inmate. Also, Mr. Kyler tells the staff that he has a sign he wants hung throughout each factory, not just on the bulletin boards. Then Mr. Kyler states, I will conducting training with each of you sometime throughout this week to ensure you understand your responsibilities in this. **(See Attachment 70, & 70a)**

YAHOO! MAIL

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Date: Tue, 28 Jun 2005 20:14:27 -0700

From: "Charles Carter" <charlie93535@verizon.net>

Subject: Training for computer recycling

To: "Leroy Smith" <leroy3409@sbcglobal.net>

From Nov 1998 to May 2004 while at the Federal Correctional Institution(FCI), Elkton, Oh, I never received any training for the handling of hazardous materials involved with Federal Prison Industries(UNICOR) computer recycling factory. I worked for UNICOR during this entire time.

Charles R. Carter
45465 25th St. East, Sp #4
Lancaster, CA 93535

Attachment #69

YAHOO! MAIL

Print - Close Window

Date: Wed, 27 Jul 2005 07:34:53 -0400

From: [redacted]

To: leroy3409@sbcglobal.net

CC: "Charles Carter" <VIP1718@bop.gov>

Subject: Clarification

I worked in the UNICOR Recycling factory at FCI Elkton frorm 07-2002 to 06-2003. I supervised the inmates working the glass breaking operation and definitely have concerns over the usafe environment in which I worked. During my Detail for Training when I worked in UNICOR there were never any precautions utilized to protect me from the dust and debris associated with the CRT's.

I would sincerely appeciate any guidance you can give me on what I should do. I am unclear on who the "General Counsel" is or how to contact them. Thank you in advance and thank you for the "heads up".
Terri Hulett

Attachment #69a

YAHOO! MAIL

Print - Close Window

Date: Wed, 14 Sep 2005 20:50:47 -0700 (PDT)

From: [redacted]

Subject: Fwd: Inmate Safety Training

To: "Leroy Smith" <leroy3409@sbcglobal.net>

Note: forwarded message attached.

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http://mail.yahoo.com

Forwarded Message

Date: Wed, 14 Sep 2005 14:46:10 -0400

From: [redacted]

To: [redacted]

Subject: Fwd: Inmate Safety Training

Forwarded Message

Date: Fri, 17 Jun 2005 20:45:14 -0400

From: "Jeff Kyler" <jkyler@central.unicor.gov>

To: "Christopher Carusso" <ccarusso@central.unicor.gov>, "Dominic Quinn" <dquinn@central.unicor.gov>, "Darren Rohrer" <drohrer@central.unicor.gov>, "Karlton Newland" <knewland@central.unicor.gov>, "William Johnston" <wjohnst@central.unicor.gov>

Subject: Inmate Safety Training

Plain Text Attachment

I received a directive from Central Office that we must conduct safety training with EVERY inmate in recycling. I have attached a copy of the training that must be signed and dated by each inmate. I will have a spanish version of this as quickly as possible. I need to have a copy placed in each of their folders and I need a copy for my records by close of business Wednesday, June 22.

Also, I have a sign that must be hung throughout each factory, not just on the bulletin board.

And last, I will be conducting training with each of you sometime throughout this week to ensure you understand your responsiblities in this.

Thanks

Jeff

Attachment #70

YAHOO! MAIL

Print - Close Window

Date: Wed, 14 Sep 2005 20:49:29 -0700 (PDT)

From: [redacted]

Subject: Fwd: Inmate training

To: "Leroy Smith" <leroy3409@sbcglobal.net>

Note: forwarded message attached.

Yahoo! Mail - PC Magazine Editors' Choice 2005
http://mail.yahoo.com

Forwarded Message

Date: Wed, 14 Sep 2005 14:46:31 -0400

From: [redacted]

To: [redacted]

Subject: Fwd: Inmate training

Forwarded Message

Date: Mon, 20 Jun 2005 08:51:16 -0400

From: "Jeff Kyler" <jkyler@central.unicor.gov>

To: "Christopher Carusso" <ccarusso@central.unicor.gov>, "Dominic Quinn" <dquinn@central.unicor.gov>, "Darren Rohrer" <drohrer@central.unicor.gov>, "Karlton Newland" <knewland@central.unicor.gov>, "William Johnston" <wjohnst@central.unicor.gov>

Subject: Inmate training

Plain Text Attachment

I have attached the training that needs to be given to each inmate on your crew and all those that are hired in the future.

There is a sign that must be hung that I will bring around to everyone this week.

Thanks

Jeff

Attachments

Files:

Production_Safety_Regulations___Inmate_6.20.05.doc (21k) [View]

Attachment #70a

Federal Prison Industries the provide initial training to staff and UNICOR Laundry crew on the UNICOR Cathode Ray Tube (CRT) Processing Procedures not until June 29, 2005. **(See Attachments 71, 71a, 71b, & 71c)** Finally, Federal Prison Industries revised their initial glass breaking procedures dated June 2003, for inmate workers and provide it again on August 25, 2005. **(See Attachments 72, 72a, 72b, 72c, 72d, 72e, 72f, 72g, & 72h)**

Federal Prison Industries exposed staff and inmate workers at FCI Texarkana to high levels of lead, cadmium, barium, and beryllium, from October 2001 to August 2002, which the OIA reports clearly identifies. What were the air sampling and personal air sampling results conducted by HEC Environmental Group Inc. The OIA report indicates, that the samples were above OSHA exposure limits, but what limits and for what hazardous metal. Then from October 2002 to April 2004 it takes Federal Prison Industries sixteen (16) months to install a glass breaking booth and it appears once again the operation wasn't shut down nor was a shower, hand washing area, or clean room area installed. Then from April 2004 to September 2004 additional five (5) months the glass breaking operation continues at which an air sampling and personal air sampling were conducted and the air sample results exceeded the OSHA's AL limit for Cadmium. The Factory Manager made a wise request to comply with the OSHA standards, which once again Mr. Novicky first priority is production, profit, and keeping the inmates working before safety and health of staff and inmates and compliance with OSHA and EPA standards.
(Prime Example the SHOWERS, HAND WASHING, and CLEAN ROOM wasn't installed)

During the OIA's interview on approximately December 7, 2004, I spoke about FCI LaTuna having a glass breaking operation. Mr. Lee informed me, that FCI LaTuna had a computer recycling program, but they didn't break monitors. I then informed Mr. Lee, that FCI LaTuna did have a glass breaking operation as well. Mr. Lee then looked at Mr. Korbelak, which Mr. Korbelak told Mr. Lee that FCI LaTuna did have a glass breaking operation for a short period of time. This conversation took place in front of the OIA investigators.

The OIA's report doesn't mention anything about FCI Marianna or USP Lewisburgh Computer Recycling Programs. The FCI Marianna computer recycling program opened in 1994, which they received CPU's and CRT's. FCI Marianna began to send their CRT's to FCI Elkton in late 1998 or early 1999 for disassembling and breaking of the monitors, which would imply FCI Marianna would of had a glass breaking operation previously.

An employee who worked for FCI Marianna recycling program sent me an e-mail dated October 14, 2005. In this e-mail the employee mentions, we did not have any of the safety equipment mentioned. Also, this employee mentions, as a result of this I am having skin problems and related difficulties. This is another risen why Federal Prison Industries and OIA weren't willing to identify FCI Marianna as one of the institutions which staff, inmates, and staff families were exposed to high levels of lead, cadmium, barium, and beryllium etc.
(See Attachment 144)

Conclusion Response:

What follows is **USP ATWATER'S ROADMAP** or **"LEARN AS YOU GO"** approach

UNICOR
Laundry

Please Keep Separate From Other Laundry

Attachment #71

Attachment A
June 28, 2005

UNICOR Laundry Procedures

UNICOR jumpsuits will be laundered in accordance with the following procedures:

1. Jumpsuits will be changed and laundered daily.

2. Upon completions of the work shift, all jumpsuits will be vacuumed with the HEPA vacuum.

3. Dirty jumpsuits will be placed in a portable bin/bag/container, that is clearly labeled "*UNICOR Laundry – Please Keep Separate From Other Laundry*"

4. The dirty laundry bin/bag/container will be delivered to the institution laundry and clean jump suits will be picked up. All UNICOR laundry will need to be processed separately in the institution Laundry Department.

5. Clean jumpsuits will be sorted by size and made available at work call the next day.

att. Amend #71a

UNICOR Cathode Ray Tube (CRT) Processing Procedures

Training Provided On June 29, 2005

Attachment # 71 b

UNICOR Staff
Procedures and Responsibilities
Glass Breaking Operations
6.23.05

Initial Biological Monitoring

Prior to commencement of operations, all personnel (staff and inmates) assigned to the CRT breaking department are required to be medically cleared to include blood and urine testing for lead and cadmium.

It is the responsibility of the staff overseeing the CRT breaking operations to coordinate the medical clearing of all inmates that enter the glass-breaking booth.

Staff responsible for the CRT breaking operations will maintain a log for inmate medical clearing to include: date, renewal date, and fit testing.

Personal Protective Equipment (PPE)

There are various PPE requirements based on the task assignment. All staff members are responsible for insuring that anyone, inmate or staff, which enters the glass-breaking booth have on the following PPE:

Worker/Task Location	Face/ Eye	Hand/ Arm	Foot	Body	Resp
Inmate glass breaker	X	X	X	X	X*
Inmate glass breaking assistant in glass breaking area	X		X		X*
Staff supervising in the glass breaking area	X		X		X*

* Additional requirements for respiratory protection use include:

1. Medical clearance
2. Fit testing – accomplished by the local Safety Manager, trained UNICOR Supervisor, or contracted outside vendor
3. Training
4. NIOSH approved air purifying respirator with particulate filters

Attachment #71C

YAHOO! MAIL

Print - Close Window

Date: Wed, 14 Sep 2005 20:44:01 -0700 (PDT)

From: [redacted]

Subject: Fwd: Inmate Glass Booth Training

To: "Leroy Smith" <leroy3409@sbcglobal.net>

Note: forwarded message attached.

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http://mail.yahoo.com

Forwarded Message

Date: Wed, 14 Sep 2005 14:51:16 -0400

From: [redacted]

To: [redacted]

Subject: Fwd: Inmate Glass Booth Training

Forwarded Message

Date: Thu, 25 Aug 2005 15:13:28 -0400

From: "Jeff Kyler" <jkyler@central.unicor.gov>

To: "Christopher Carusso" <ccarusso@central.unicor.gov>, "Dominic Quinn" <dquinn@central.unicor.gov>, "Darren Rohrer" <drohrer@central.unicor.gov>, "Karlton Newland" <knewland@central.unicor.gov>, "William Johnston" <wjohnst@central.unicor.gov>

Subject: Inmate Glass Booth Training

Plain Text Attachment

Delete all previous editions of the Inmate Glass Booth Training forms
and use only the edition that is attached.

Thanks

Jeff

Attachments

Files:

Glass_Breaking_Procedures_8.25.05.doc (44k) [View]

Attachment # 72

Glass Breaking Procedures

UNICOR
FCI Elkton

Revision Date: August 25, 2005

Attachment #72a

Table of Contents

1. Mandatory Safety Equipment
2. Personal Hygiene And Clean Up
3. End Of Shift Clean Up Procedures
4. Respirator Cleaning, Inspection, and Storage Procedures
5. Handling of Accidental Breakage of CRT Glass (Clean Up)
6. Booth Cleaning Areas Of Responsibility

Attachment # 72 b

MANDATORY SAFETY EQUIPMENT

THE FOLLOWING SAFETY EQUIPMENT IS MUST BE WORN BY ALL STAFF AND INMATE WORKERS ENTERING THE GLASS BREAKING AREA.

Staff and workers in the ventilation booth are required to wear:

1 Full face respirator
2 Leather/Kevlar work gloves
3 Kevlar sleeves
4 Safety boots
5 Ear protection/ear muffs/ear plugs
6 Jumpsuit

Note: Full-face respirators shall have ANSI rating for impact protection.

Staff and workers outside the ventilation booth are required to wear:

1 Full-face respirator or half-face respirator
2 Safety glasses
3 Leather/Kevlar work gloves
4 Kevlar sleeves
5 Safety boots
6 Ear protection/ear muffs/ear plugs
7 Jumpsuit

Note: Full-face respirators and safety glasses shall have ANSI rating for impact protection.

FAILURE TO ADHERE TO THESE REQUIREMENTS MAY RESULT IN IMMEDIATE TERMINATION FROM UNICOR.

_____	_____
(Inmate's Name – Printed)	(Reg. Number)
_____	_____
(Inmate's Signature)	(Date)

Attachment #72c

PERSONAL HYGIENE AND CLEAN-UP

ALL INMATE WORKERS SHALL ADHERE TO THE FOLLOWING HYGIENE PROCEDURES DURING BREAKS, LUNCH, AND AT THE END OF THE WORK SHIFT.

BREAKS AND LUNCH

1. All inmate workers will thoroughly HEPA vacuum all outer protective equipment to include but not limited to their aprons, Kevlar gloves, and jumpsuit.

2. All inmate workers shall thoroughly HEPA vacuum the top layer jumpsuit prior to removing their jumpsuit. The dirty jumpsuit shall be placed in a plastic bag and marked "**DIRTY**" prior to exiting the glass breaking area.

3. All inmate workers shall HEPA vacuum their head and neck area thoroughly prior to exiting the glass breaking area.

4. All inmate workers shall thoroughly wash their hands and facial area immediately before exiting the room with hot, soapy water.

END OF SHIFT

1. All inmate workers shall thoroughly HEPA vacuum the top and inner layer jumpsuits prior to removing them. The dirty jumpsuit shall be placed into the plastic bag marked "**DIRTY**" prior to exiting the glass breaking area.

2. All inmate workers shall thoroughly HEPA vacuum their head and neck area prior to exiting the glass breaking area.

3. All inmate workers shall thoroughly wash their hands and facial area immediately before exiting the room with hot, soapy water.

4. All inmate workers shall change into institutional issued clothing before leaving the factory.

FAILURE TO FOLLOW THESE PROCEDURES MAY RESULT IN IMMEDIATE TERMINATION FROM UNICOR.

(Inmate's Name – Printed)	(Reg. Number)
(Inmate's Signature)	(Date)

Attachment #72 d

END OF SHIFT CLEAN-UP PROCEDURES

THE GLASS BREAKING DEPARTMENT SHALL BE CLEANED THOROUGHLY EACH DAY AND ALL GLASS DEPARTMENT WORKERS WILL PARTICIPATE IN THE CLEAN-UP.

NOTE: RESPIRATORS MUST BE WORN DURING ALL CLEAN-UP PROCEDURES.

1. Spray a light film of water over the glass and dust debris on the floor before lightly sweeping the large pieces of glass and debris into one location.

2. Pick up glass and debris in a large dustpan and gently place into a Gaylord box.

3. Thoroughly vacuum the floor area using the HEPA vacuum labeled "**FLOOR**".

4. Thoroughly vacuum all non-floor surfaces using the HEPA vacuum labeled "**FLOOR**". After vacuuming, wipe these surfaces down with a damp towel. Place the dirty towels into a non-regulated waste container and store in a satellite storage site.

5. HEPA vacuum **ALL** filter panels inside the ventilation system.

6. When HEPA vacuum becomes full, all debris shall be placed into a plastic disposable bag and stored in the non-regulated waste container at the satellite storage site.

7. Respirators shall be inspected, washed, sanitized, and stored in a clean, tightly sealed plastic bag(s).

8. Two (2) HEPA vacuums shall be in the glass breaking department at all times.

9. No food or drink shall be permitted in the glass-breaking department.

10. No personal items such as books, papers, or radios are permitted in the glass breaking room.

FAILURE TO FOLLOW THESE PROCEDURES MAY RESULT IN IMMEDIATE TERMINATION FROM UNICOR.

_____ (Inmate's Name – Printed)

_____ (Reg. Number)

_____ (Inmate's Signature)

_____ (Date)

Attachment #72e

RESPIRATOR CLEANING, INSPECTION, AND STORAGE PROCEDURES

AT THE END OF EACH WORK DAY, ALL GLASS BREAKING INMATES WILL CLEAN, INSPECT, AND WIPE DOWN THEIR RESPIRATOR IN THE FOLLOWING MANNER:

1. Place respirator in soapy water.
2. Scrub gently to remove all residues.
3. Rinse respirator in a tub containing clean water.
4. Gently shake to remove excess water.
5. Wipe down inside and outside of respirator with cleaning pad.
6. Inspect rubber seal for cracks.
7. Inspect straps for tears.
8. Inspect plastic for cracks.
9. Place dry respirator in storage bag and seal.

FAILURE TO FOLLOW THESE PROCEDURES MAY RESULT IN IMMEDIATE REMOVAL FROM UNICOR.

(Inmate's Name – Printed)	(Reg. Number)
(Inmate's Signature)	(Date)

Attachment #72 f

Handling Of Accidental Breakage of CRT Glass (Clean-Up)

1. **Apply a light spray of water over the CRT and all glass.**
2. **Gently sweep the debris on the floor into one location.**
3. **Pick up the glass using a large dustpan.**
4. **Place glass in a small box.**
5. **Cover the box with stretch wrap to prevent any airborne contamination.**
6. **Use the HEPA vacuum to clean the floor of smaller debris.**
7. **Wash hands and facial area with warm, soapy water prior to returning to work station.**

FAILURE TO FOLLOW THESE PROCEDURES MAY RESULT IN IMMEDIATE REMOVAL FROM UNICOR.

(Inmate's Name – Printed)	(Reg. Number)
(Inmate's Signature)	(Date)

Attachment #729

Booth Cleaning Areas Of Responsibility

Glass Breakers:

1. **Vacuum and wipe down your work area to include all ledges.**
2. **Vacuum filter**
3. **Clean top of booth**
4. **Wipe down the walls within the breaking area**

Two Handlers:

1. **Vacuum and wipe down back room (HEPA filter room)**
2. **Vacuum and wipe down the dressing area**

Two Handlers:

1. **Vacuum and wipe down the prep area to include:**
   - **Pallet jack**
   - **Garbage cans**

All handlers are to assist in the breaking area upon completion of their assigned area.

A schedule will be posted stating groups.

Dump all water buckets at the end of each day. Do not allow any standing water overnight.

If you have any questions, ask your supervisor for assistance.

FAILURE TO FOLLOW THESE PROCEDURES MAY RESULT IN IMMEDIATE REMOVAL FROM UNICOR.

(Inmate's Name – Printed)	(Reg. Number)
(Inmate's Signature)	(Date)

Attachment #72 h

YAHOO! MAIL

Print - Close Window

Date: Fri, 14 Oct 2005 12:54:32 -0400

From: [redacted]

To: leroy3409@sbcglobal.net

Subject: Re: News Review former

Leroy Smith , I am a former worker at the F.C.I. Marianna recycling program. I was there in simuliar work situtations. We did not have any of the safety equiptment mentioned . Now as a result of this I am having skin problems and related difficulties. Let's talk email me at [redacted] .

>>> Leroy Smith <leroy3409@sbcglobal.net> 9/17/2005 8:33:35 PM >>>
This is a new press release that came out today, addressing the Agency Investigation Report.

Attachment #144

developed to ensure the safety and health of our staff and inmate workers and provided to Federal Prison Industries and Safety and Health Division Executive staff on July 19, 2002: The UNICOR Computer Recycling Program began operation at USP Atwater in April 2002. Prior to opening, the Safety Manager reviewed all relevant Material Safety Data Sheets and discovered the computer monitors contained 98 per cent lead and other hazardous metals to include but not limited to arsenic, barium, cadmium, chromium, and mercury. Concerned, he requested any previous analytical data from other UNICOR Computer Recycling Programs. He learned that no other hazardous risk assessments had been conducted. However, based on his insistence, UNICOR did agree to install an internal exhaust filtering system and pay for initial testing of the exhaust filters. The Safety Manager independently contracted for outside testing. The test results are as follows:

Test Results

Test 1. 40 CFR 262.11 Hazardous Waste Determination. To determine if the solid waste is a hazardous waste. When a solid waste exhibits the characteristics of toxicity, which is 5 part per million or greater is defined as hazardous waste.

Testing Results: The Toxicity Characteristic Leaching Procedure (TCLP) is the test method 1311 in "Test Methods" for evaluating solid waste, Physical/Chemical method.[1]

a. Lead **EPA Max 5 mg/L liquid form**
UNICOR 1970 mg/kg solid waste
UNICOR 98.3 mg/L liquid form

b. Cadmium **EPA Max 1 mg/L liquid form**
UNICOR 5.8 mg/kg solid waste
UNICOR 0.29 mg/L liquid waste

c. Barium **EPA Max 100 mg/L liquid form**
UNICOR 250 mg/kg solid waste
UNICOR 12.5 mg/L liquid waste

1 Laboratory test results on file with American Westech Inc., 4400 Linglestown Road, Harrisburg, PA 17112

Test 2. 29 CFR 1926.62 (d) Exposure Assessment. The employer who has a workplace or operation covered by this standard shall initially determine if any employee may be exposed to lead at or above the action level.[2]

Testing Results: A positive initial monitoring at or above the action level the employer shall conduct monitoring which is representative of the exposure for each employee in the workplace who is exposed to lead.

(a) Lead **OSHA Action Level 30 ug/m3**
OSHA PEL 50 ug/m3
UNICOR 99 ug/M3

(b)	Cadmium	**OSHA Action Level**	**0.0025 mg/m3**
		OSHA PEL	**0.005 mg/m3**
		UNICOR	0.05 mg/m3

Corrective Measures

Measure 1. **Implemented:** Spray Systems 3-stage Powder Booth.

Advantages:

a. Environmental control measure to reduce the exposure of harmful metals to staff and inmate workers.
b. Control of airborne particulate's inside and outside the glass breaking operation.
c. The three stage exhaust filters, 1st Stage - Ultra Panel Filter for large particulate's,
2nd stage - 2 Pocket Bag Filter for medium particulate's, 3rd Stage - 5 Pocket Final Filter to catch real fine particulate's prior to exhausting back into the glass breaking area.
d. Control and contain the Hazardous Metals.

Measure 2. **Partially Implemented:** Conducted initial baseline personal and area air monitoring exposure assessment.

Advantages:

a. Identify the exposure level to staff and inmates.
b. The need to conduct staff and inmate baseline blood testing requirement.
c. The need for more extensive air monitoring and swab testing.
d. Determine the level of personal protective equipment protection factor.
e. Determine Hygiene Facilities and Practices.

Measure 3. **Not Implemented:** Lead Management Plan.

Advantages:

a. Compliance with OSHA 1926.1027 for Lead.

b. Identify work practices, housekeeping, respiratory, personal hygiene, medical monitoring, and waste disposal.
c. Identify UNICOR as the responsible party.

Measure 4. **Not Implemented:** Respiratory and protective work clothing.

Advantages:

a. Compliance with OSHA 1910.1027 and 1910.134.
b. Protection to staff and inmate workers.
c. Cleaning and replacement of respirators and work clothing daily.

Additional tests will be conducted during the week of 22-26 July 2002, along with respiratory medical evaluations, respiratory training, and fit testing for staff and inmate workers. The Safety Department has disseminated the initial exposure results to staff and inmate workers. Additionally, UNICOR staff have been offered baseline blood tests to determine the level of exposure to lead and cadmium. We are awaiting the results of baseline blood tests for inmates on the glass breaking work detail. UNICOR should be responsible for funding and developing a Lead Management Plan to meet OSHA guidelines for work practices, housekeeping, respiratory, personal hygiene, medical monitoring, and waste disposal. The implementation of these initiatives will allow the UNICOR Computer Recycling Program to safely resume normal operations. These types of initiatives should be implemented at other UNICOR glass breaking operations Bureau wide. This is clearly a **"LEARN AS YOU GO"** process, which should of been established since 1994 when the first computer recycling program became operational.

The OIA report brings deep concerns in the direction and events with regards to the FCI Elkton, FCI Texarkana, FCI LaTuna, FCI Marianna, and USP Lewisburgh's Cathode Ray Tube (CRT's) disassembling and glass breaking operations. **First,** no health risk assessment, exposure assessment, and/or metal assessments were conducted on any of the computer recycling programs. **Second,** no established compliance procedures developed to assist factories initially opening an computer recycling program. **Third,** the glass breaking operations resulted in the release of hazardous metals into the air, on the ground, ground water, local landfills, factories, and warehouses prior to the glass breaking booth's being installed. **Fourth,** staff and inmates weren't provided proper personal protective equipment nor a respirator to protect them from ingestion or inhalation of the hazardous metals. **Fifth,** once the residual hazardous metals were collected in the filtering system, the filters were not handled or disposed of as hazardous waste. **Sixth,** if the residual hazardous metals on the ground were collected properly, the harmful dust should of been handle or disposed of as hazardous waste. **Seventh,** we have an National Industrial Hygienist that has made statements, which the test results received from FCI Elkton can't be validated. This is just a few OSHA and EPA standards, which Federal Prison Industries knowingly violated for production and profit.

The implications Bureau-Wide are that our staff and inmates were being exposed to higher levels of lead, cadmium, barium and other dangerous metals than allowed for by Occupational Safety and Health Act (OSHA) from 1994 through 2005. The broader implications are that staff families (Spouses and Children) were and still are being exposed to high to low concentration or low doses of lead, cadmium, barium, and other dangerous metals as well. Our staff and inmates are still being exposed to high to low concentrations or low doses of hazardous metals working the shipping, receiving, handling, and disassembling processes. Federal Prison

Industries has not provided a shower, hand washing, clean room, changing area, nor additional clothing for staff to shower and change out of their dirty clothing prior to leaving the institution to comply with the OSHA standard. Federal Prison Industries never sought technical advise or assistance from the National Safety and Health Division prior to opening a computer recycling operations, which would of prevented exposure to staff, inmates, and staff families. Federal Prison Industries began installing booths at other institutions only after the continued struggle of the Safety Department at USP Atwater by making UNICOR began complying with the OSHA and EPA standards. Mr. Schwalb, Mr. Novicky, Ms. Keidel, Mr. V. Smith, Mr. Aragon, and Ms. Cantwell were knowingly aware of UNICOR's non-compliance with OSHA and EPA. An OSHA Inspector mentioned to me, that when someone is knowingly aware of the OSHA standard they are violating, knowingly and wilfully continue to violate the OSHA standard, they are knowingly and wilfully violating the law, which is criminal intent in nature.

It is clear Federal Prison Industries, Agency, and OIA wants to focus solely on the present and are trying to discard their intentional endangerment of staff, inmates, and staff families during the pervious years, which they were exposed to hazardous metals above the OSHA exposure limits from one (1) to ten (10) years. The staff, inmates, and staff families will be lucky if they don't face any serious health conditions. They have clearly placed distractions, obstacles, down played, and/or blatantly ignored the safety and environmental concerns associated with the CPU and CRT's in this report, which Mr. Schwalb, Mr. Novicky, Ms. Keidel, Mr. V. Smith, and Mr. Aragon have clearly orchestrated. The OSHA inspections which OIA speaks about in the report were not impartial and comprehensive, which each institution was provide ample time to prepare for the inspections.

Finally, the OIA's report talked about Federal Prison Industries and Safety staff working together and neither the Federal Prison Industries nor Safety staff intentionally or overtly placed CRT workers in harms way. I would like the following statement to speak for themselves:

1. During the Office of Internal Affairs interview Mr. Cantwell told me, that UNICOR and the Health Service Division were working closely together on the glass breaking operations environmental concerns. I told Ms. Cantwell, not according to the conversation I had with Mr. Tussey and Mr. Lee on August 28, 2002. Ms. Cantwell turned and looked at Mr. Korbelak.Mr. Korbelak told Ms. Cantwell and myself that there was some problems with communication between both UNICOR and the Health Service Division. **(See Attachments 59 & 59a part of my Affidavit)**
2. I asked Ms. Cantwell, if she was aware that FCI Elkton, FCI Texarkana, and FCI La Tuna were not in OSHA compliance during their one to four years of operation? Ms. Cantwell replied, "I had become aware of it." I then asked Ms. Cantwell, shouldn't the agency take responsibility to inform past and present staff and inmate workers of their exposure to hazardous metals and provide them the option to take a blood and urine test? Ms. Cantwell replied, "Yes." **(See Attachments 75 & 75a)**
3. On approximately December 8, 2004, I told Mr. Lee during the Office of Internal Affairs interview that were exposing our staff and inmates to low concentrations of hazardous metals, which the recent wipe samples confirm. I then asked Mr. Lee, are you aware that OSHA Appendix A states, that low concentrations will still cause health

OATH

I declare, under the pain and penalty of perjury, that the foregoing statement consisting of 6 page(s) is true and accurate to the best of my knowledge and belief.

AFFIANT

Subscribed and sworn to before me this 10th *day of* December, *2004*

Authorized by 5 U.S.C. 303
to Administer Oaths

Scott Houridan, Special Agent
Federal Bureau of Prisons
Office of Internal Affairs

Attachment #75

This is an addendum to my Affidavit of 23 pages on December 9, 2004, which I was advised by the OIA Investigators that I could do if I thought of anything else that would be helpful.

Section 63. I asked Ms. Cantwell if she was aware that ~~FCI~~ Ellctan, FCI Texarkana, and FCI LaTuna were not in compliance with OSHA Guidelines during their One to Four year operation. Ms. Cantwell told me that she had become aware of it. I then asked Ms. Cantwell shouldn't the agency to responsibility to inform past and present staff and inmates of their exposure to hazardous materials and provide them the option to take a blood and urine test. Ms. Cantwell told Me Yes.

Attachment # 75a

 Affiant's Initials ~~KL~~ date 12/10/04

concerns. Mr. Lee replied, Yes. I then asked Mr. Lee, are you telling me that we can knowingly expose our staff and inmates to low concentrations of hazardous metals and that's acceptable? Mr. Lee told me, No I am not saying that's acceptable. I then told Mr. Lee, then why does Ms. Keidel and Mr. V. Smith state that's the information and stance they received directly from you. Mr. Lee told me, I have never informed Ms. Keidel or Mr. V. Smith of that! **(See Attachments 48, & 48a Affidavit)**

4. On July 12, 2004, Mr. Korbelak stated, "USP Atwater's test results will have an effect on other institutions Bureau-Wide, which will effect older recycling programs and current recycling programs going online." He then stated, "FCI Elkton had conducted some testing, but he couldn't validate the testing, which they based their decision to conduct the glass breaking operations from the testing results from the company UNICOR sells their glass too, per a conversation with Mr. Larry Novicky. Mr. Korbelak also stated, the initial baseline testing conducted by USP Atwater appears to be the only reliable test results anyone has been able to present to him for review.

(See Attachment 7, 7a, & 7b and this is mentioned in my Affidavit)

(These statements from Mr. Korbelak puts in question Allegation 4 Response)

5. During Mr. Stahley's deposition on April 21, 2005, he talks about the following:

A. 14 **Q.** (Ms. Dryovage) (Page 64) And what did she tell you? 15 **A.** (Mr. Stahley) The question was was Mr. Novicky angry. 16 Yes, he was. 17 MS. NAVARRO: Can I see that memo, 18 please. 19 BY MS.DRYOVAGE: 20 **Q.** Were you upset that you were being put in 21 an untenable situation? 22 **A.** Define that word for me. 23 **Q.** Okay. Well, what was the reason why you 24 put this memo out on July 16th, 2002? 25 **A.** Because I recognized that this was beyond Deposition of THOMAS STAHLEY, 04/21/05 64 **(See Attachment 76)**

B. 1 my expertise to resolve the issues concerning 2 Mr. Smith's concerns. I am not a chemist so I wasn't 3 able to make any decision here that would get us in 4 compliance. 5 **Q.** (Ms. Dryovage) (Page 65) Now, just to make sure I have the facts 6 straight, you were requesting Novicky to provide you with authorization to come into compliance with the 8 OSHA regulations, and Mr. Smith was telling you that 9 if the agency did not take steps to come into 10 compliance with the OSHA regulations, they would be 11 in violation. 12 **A.** (Mr. Stahley) Yes. 13 **Q.** And so you wrote this memo, Exhibit 6, on 14 July 16th, 2002 to inform Mr. Novicky that they 15 needed to take some steps to provide you with the 16 support to deal with the issues that were being 17 raised by Mr. Smith? 18 **A.** Yes. 19 **Q.** And did you receive any information in 20 response to this from Mr. Novicky? 21 A. No. 22

Deposition of THOMAS STAHLEY, 04/21/05 65 (See Attachment 77)

C. 12 **Q.** He goes on to say, "The verbal 13 transmission of accusations and/or innuendoes of 14 noncompliance of UNICOR's Atwater operation is 15 unprofessional and is to cease immediately." 16 Was your understanding that he was 17 referring to Mr. Smith's disclosure of noncompliance 18 and violations of the OSHA regulations? 19 **A.** Yes. Deposition of THOMAS STAHLEY, 04/21/05 67 **(See Attachment 78)**

D. 14 **Q.** (Ms. Dryovage) (Page 77)Do you recall receiving any other 15 communication accusing Mr. Smith of being 16 unprofessional by Mr. Novicky? 17 **A.** (Mr. Stahley) No. 18 **Q.** Now, you requested that Mr. Novicky 19 assist you in the

discuss Exhibit 6 with you?

A. This memo that I did?

Q. Yes.

A. No.

Q. What did she tell you?

A. Who?

Q. The agency rep.

A. In regards to --

Q. In regards to leaving the room just now.

A. We didn't talk about this memo.

Q. And was there anything else said?

A. In terms of the previous questioning, yes.

Q. And what did she tell you?

A. The question was was Mr. Novicky angry. Yes, he was.

MS. NAVARRO: Can I see that memo, please.

BY MS. DRYOVAGE:

Q. Were you upset that you were being put in an untenable situation?

A. Define that word for me.

Q. Okay. Well, what was the reason why you put this memo out on July 16th, 2002?

A. Because I recognized that this was beyond

Attachment #76

my expertise to resolve the issues concerning Mr. Smith's concerns. I am not a chemist so I wasn't able to make any decision here that would get us in compliance.

Q. Now, just to make sure I have the facts straight, you were requesting Novicky to provide you with authorization to come into compliance with the OSHA regulations, and Mr. Smith was telling you that if the agency did not take steps to come into compliance with the OSHA regulations, they would be in violation.

A. Yes.

Q. And so you wrote this memo, Exhibit 6, on July 16th, 2002 to inform Mr. Novicky that they needed to take some steps to provide you with the support to deal with the issues that were being raised by Mr. Smith?

A. Yes.

Q. And did you receive any information in response to this from Mr. Novicky?

A. No.

Q. Was Mr. Novicky taking any steps to prevent you from testing the glass breaking operation during this period of time June and July 2002?

A. I can't use the word preventing.

Attachment #77

From what I have heard to date the testing was incorrectly performed. If there are any areas that UNICOR must address in order to be in compliance with all regulations, I want a corrective action plan and timetable provided that will meet any areas of concerns, i.e., respirators, vacuums, et cetera. What was your understanding based on that statement in his e-mail?

A. He wanted us to make the necessary changes to continue to keep testing so we would be able to open up that portion of the factory.

Q. He goes on to say, "The verbal transmission of accusations and/or innuendoes of noncompliance of UNICOR's Atwater operation is unprofessional and is to cease immediately."

Was your understanding that he was referring to Mr. Smith's disclosure of noncompliance and violations of the OSHA regulations?

A. Yes.

Q. And did he tell you specifically what he wanted you to do in order to cease Mr. Smith's actions in terms of disclosures?

A. No.

Q. What steps did you take in response to that aspect of his e-mail dated July 10th, 2002?

Attachment #78

glass breaking operation, did you 20 not? 21 **A.** Yes. 22 **Q.** What assistance did you receive from 23 Mr. Novicky? 24 **A.** Little to none. 25 **Q.** And did you receive any written **Deposition of THOMAS STAHLEY, 04/21/05 77** 1 documentation from Mr. Novicky about what assistance 2 he was going to provide to you? 3 **A.** No. 4 **Q.** Now, did Mr. Novicky ever ignore a 5 written request for assistance from you? 6 MS. NAVARRO: I'm going to object to the 7 phrasing of the question in that I believe that this 8 witness can only answer from his knowledge. He 9 doesn't -- I don't know that he can answer for 10 Mr. Novicky. 11 BY MS. DRYOVAGE: 12 **Q.** He's not asked that. I'll repeat the 13 question. The question was did you receive any 14 ignoring of a written request? Do you understand the 15 question? 16 **A.** I haven't received anything in writing. 17 I don't understand your question is what I'm saying. 18 **Q.** Okay. You wrote to Mr. Novicky and 19 requested assistance from him, did you not? 20 **A.** Are you making reference to the memo 21 dated July the 16th? 22 **Q.** I'm making reference to all 23 correspondence that you wrote to Mr. Novicky. And it 24 is a fact that you did write and request assistance 25 on July 8th -- or July 16th as well as other times; **Deposition of THOMAS STAHLEY, 04/21/05 78** 1 is that a fact? 2 **A.** Yes. 3 **Q.** (Ms. Dryovage) And did you receive a prompt response 4 that gave you an indication that he was willing to 5 provide you with the assistance that you were 6 seeking? 7 **A.** No. 8 **Q.** Did you send Mr. Novicky e-mails 9 requesting assistance? 10 **A.** That one memo. 11 **Q.** And did Mr. Novicky respond in a prompt 12 fashion that he would provide you with assistance? 13 **A.** The answer is no. 14 **Q.** Did he send you any indication that he 15 was willing to provide you with assistance that you 16 requested? 17 **A.** No. 18 **Q.** Do you believe that your request for 19 assistance was reasonable under the circumstances? 20 **A.** Yes. 21 **Q.** Did you take any steps after not 22 receiving a response or assistance from Mr. Novicky 23 to try to get someone in the agency to get him to 24 give you what you needed? 25 A. No. **Deposition of THOMAS STAHLEY, 04/21/05 79** 1 **Q.** And how did you feel when you were 2 treated this way by Mr. Novicky? 3 **A.** Disappointed. 4 **Q.** The July 16th memo to Mr. Novicky, did 5 you discuss that with Mr. Smith? 6 **A.** No. 7 **Q.** Do you recall informing Mr. Smith that 8 you were going to tell Mr. Novicky that you needed 9 assistance? 10 **A.** Yes, but I didn't share that memo with 11 him, no. 12 **Q.** But you shared with him the fact that you 13 were going to request the assistance in writing? 14 **A.** That's correct. 15 **Q.** And did you share with Mr. Smith the fact 16 that you were going to document your request for 17 assistance in writing to cover yourself in case they 18 tried to blame these problems on you? 19 **A.** If you're asking me if you think I CYA'd, 20 that is not why I did that. I did that memo because 21 I needed help because I did not know what to do. 22 **Q.** Well, I'm just asking whether or not -- 23 **A.** You're asking me if my motive is to cover 24 myself, and that's not what I did. 25 **Q.** Okay. I am trying to document that you **Deposition of THOMAS STAHLEY, 04/21/05 80** 1 had conversations with Mr. Smith about Mr. Novicky's 2 refusal to provide you with what you needed to do 3 your job and to run the facility and the program in a 4 safe and healthy manner. 5 **A.** You're asking me did he send a team in 6 here as I requested. The answer is no. That's what 7 I asked for. I asked for a hygienist. As you can 8 see, I think it's in the memo who I asked for,

and 9 the reason why I asked for those people is because 10 Mr. Smith and I talked about it. **Deposition of THOMAS STAHLEY, 04/21/05 81**
(See Attachments 79, 79a, 79b, 79c, &79d)

Listing of Actual/Apparent Violations: The list below is the violation of Law, Rule, or Regulation, Specific Danger to Public Health or Safety, Abuse of Authority at the Federal Prison Industry Factories, USP Atwater, California, FCI Elkton, Ohio, FCI Texarkana, Arkansas, FCI Marianna, Florida, FCI LaTuna, Texas, and USP Lewisburgh, Pennsylvania

1. Executive Order 12196 - that Safety Officials shall have sufficient authority to correct unsafe and unhealthy working conditions.
2. OSHA 29 CFR 1960 - that Safety Officials shall have sufficient authority to correct unsafe and unhealthy working conditions.
3. Executive Order 12196 - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights.
4. OSHA 29 CFR 1960 - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights.
5. Program Statement 1600.08, Chapter 1, Page 4, Section g - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights under Executive Oder 12196, 29 CFR 1960, or for participating in the Bureau's Safety and Environmental Health Program.
6. Program Statement 1600.08 Occupational Safety and Environmental Health, Chapter 1, Page 3, Section 5 - Safety Manager - serves as staff advisor to the Chief Executive Officer of their institutions on matters relating to safety and environmental health program. Professional judgement shall be exercised when regulation and policy is not item specific.
7. Environmental Protection Agency (EPA) Risk Assessment requirements for work exposure, metal exposure, and environmental releases of hazardous emissions.
8. OSHA 1910.1000 Air Contaminants - to determine employee exposure.
9. OSHA 29 CFR 1910.1025 Lead (d)(1)(i)(2) Exposure Monitoring - Initial Determination to assess employee exposure which would occur if the employee were not using a respirator .
10. OSHA 29 CFR 1910.1027 Cadmium(d)(1)(i)(2)(i) Exposure Monitoring - Specific Initial Monitoring to assess employee exposure which would occur if the employee were not using a respirator.
11. Bureau's Program Statement 1600.08, Chapter 2, Page 17, Section 3 - Toxic and Hazardous Substances.
12. OSHA 29 CFR 1910.1000(e) Administrative or engineering controls must first be determined and implemented whenever feasible, and equipment or technical measures used for this purpose must be approved for each particular use by a competent industrial hygienist or other qualified technically qualified person.
13. Program Statement 1600.08 Occupational Health and Environmental Safety, Chapter 1, Page 24, Section P(1) - Personal Protective Equipment - shall be provided and worn in accordance with 29 CFR, OSHA 1926, Construction Standards, or as deemed necessary by the Safety Manager.
14. Program Statement 1600.08 Occupational Health and Environmental Safety,

Q. Do you recall touching him during that walk-through?

A. That did not happen.

Q. Were you questioned regarding any personal contact, physical contact with Mr. Smith by anyone at the Bureau of Prisons at any point?

A. The answer is no.

Q. Now, other than the e-mail that we discussed where Mr. Novicky directed or stated that he did not want any more testing, was there any other communication from Mr. Novicky regarding Mr. Smith's OSHA disclosures?

A. Not at my level, no.

Q. Do you recall receiving any other communication accusing Mr. Smith of being unprofessional by Mr. Novicky?

A. No.

Q. Now, you requested that Mr. Novicky assist you in the glass breaking operation, did you not?

A. Yes.

Q. What assistance did you receive from Mr. Novicky?

A. Little to none.

Q. And did you receive any written

Attachment # 79

documentation from Mr. Novicky about what assistance he was going to provide to you?

A. No.

Q. Now, did Mr. Novicky ever ignore a written request for assistance from you?

MS. NAVARRO: I'm going to object to the phrasing of the question in that I believe that this witness can only answer from his knowledge. He doesn't -- I don't know that he can answer for Mr. Novicky.

BY MS. DRYOVAGE:

Q. He's not asked that. I'll repeat the question. The question was did you receive any ignoring of a written request? Do you understand the question?

A. I haven't received anything in writing. I don't understand your question is what I'm saying.

Q. Okay. You wrote to Mr. Novicky and requested assistance from him, did you not?

A. Are you making reference to the memo dated July the 16th?

Q. I'm making reference to all correspondence that you wrote to Mr. Novicky. And it is a fact that you did write and request assistance on July 8th -- or July 16th as well as other times;

Attachment #79a

is that a fact?

A. Yes.

Q. And did you receive a prompt response that gave you an indication that he was willing to provide you with the assistance that you were seeking?

A. No.

Q. Did you send Mr. Novicky e-mails requesting assistance?

A. That one memo.

Q. And did Mr. Novicky respond in a prompt fashion that he would provide you with assistance?

A. The answer is no.

Q. Did he send you any indication that he was willing to provide you with assistance that you requested?

A. No.

Q. Do you believe that your request for assistance was reasonable under the circumstances?

A. Yes.

Q. Did you take any steps after not receiving a response or assistance from Mr. Novicky to try to get someone in the agency to get him to give you what you needed?

A. No.

Attachment # 79 b

Q. And how did you feel when you were treated this way by Mr. Novicky?

A. Disappointed.

Q. The July 16th memo to Mr. Novicky, did you discuss that with Mr. Smith?

A. No.

Q. Do you recall informing Mr. Smith that you were going to tell Mr. Novicky that you needed assistance?

A. Yes, but I didn't share that memo with him, no.

Q. But you shared with him the fact that you were going to request the assistance in writing?

A. That's correct.

Q. And did you share with Mr. Smith the fact that you were going to document your request for assistance in writing to cover yourself in case they tried to blame these problems on you?

A. If you're asking me if you think I CYA'd, that is not why I did that. I did that memo because I needed help because I did not know what to do.

Q. Well, I'm just asking whether or not --

A. You're asking me if my motive is to cover myself, and that's not what I did.

Q. Okay. I am trying to document that you

had conversations with Mr. Smith about Mr. Novicky's refusal to provide you with what you needed to do your job and to run the facility and the program in a safe and healthy manner.

A. You're asking me did he send a team in here as I requested. The answer is no. That's what I asked for. I asked for a hygienist. As you can see, I think it's in the memo who I asked for, and the reason why I asked for those people is because Mr. Smith and I talked about it.

Q. Now, did you keep records on whether or not the glass breaking program was making money or losing money during 2002?

A. Can't do that because it's as a whole. There is no individual department. I don't control the moneys that way. I can't answer that question.

Q. Were there any records maintained showing the --

A. Cost?

Q. The money and the cost?

A. No, ma'am. We don't do it that way. UNICOR doesn't split the money that way.

Q. Did you keep track of the amount of money that the glass breaking program was making or losing on a chalk board in your office?

Attachment #79d

Chapter 1, Page 24, Section P(6) - Personal Protective Equipment - Purchase approvals of such equipment shall be routed through the Safety Department to insure it meets all current testing and certification requirements.

15. Program Statement 1600.08, Chapter 1, Page 24, Section P - Personal Protective Equipment, Subpart 7 - A Hazard Assessment of Personal Protective Equipment must be conducted in compliance with **OSHA 29 CFR 1910-Subpart I Appendix B.**

16. OSHA 29 CFR 1910.132(d)(1) - The employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall.

17. OSHA 29 CFR 1910.132(d)(1)(I) - Select and have each affected employee use , the type of PPE that will protect the affected employee from the hazards identified in the hazard assessment.

18. OSHA 29 CFR 1910 -Subpart I Appendix B provides the following: Section 3 (a) - The purpose of the survey is to identify sources of hazards to workers or co-workers.

19. Consideration should be given to the basic hazard categories: 1. Impact, 2. Penetration, 3. Compression (roll-over), 4. Chemical, 5. Heat, 6. **Harmful Dusts**, and 7. Light (optical) radiation.

20. Section 3 b - Sources. During the walk-through survey the safety officer should observe: Section (d) - sources of harmful dust. Section 3 d - Each of the basic hazards should be reviewed and a determination made as to the type, level of risk, and seriousness of potential injury from each of the hazards found in the area.

21. OSHA 29 CFR 1910.134 Respiratory Protection and Respirator Cleaning Procedures.

22. OSHA 29 CFR 1910.1027(g)(3) Cadmium Respiratory Protection and Respirator selection.

23. OSHA 29 CFR 1910.1025(f)(3) Lead Respiratory Protection and Respiratory Selection

24. OSHA 29 CFR 1910.1025(3) Written Compliance Program

25. OSHA 29 CFR 1910.1025(2) Written Compliance Program

26. OSHA 29 CFR 1910.1025(j) Lead Medical Surveillance and OSHA 29 CFR 1910.1025(j)(iii) Without Cost to the Employee.

27. OSHA 29 CFR 1910.1027(1) Cadmium Medical Surveillance and OSHA 29 CFR 1910.1027(1)(iii) Without Cost to the Employee

28. OSHA 29 CFR 1910.1025(d)(8) Lead - Employee Notification - within 5 days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represents that employees exposure.

29. OSHA 29 CFR 1910.1027(d)(5) Cadmium - Employee Notification of Monitoring Results within 15 days of receipt of the results, notify each affected employee individually in writing, and post the results of the exposure monitoring in an appropriate location that is accessible to all affected employees.

30. OSHA 29 CFR 1910.1025(i) Lead - Hygiene Facilities and Practices

31. OSHA 29 CFR 1910.1027(j) Cadmium - Hygiene Facilities and Practices

32. Program Statement 1600.08 Occupational Health and Environmental Safety, Chapter 1, Page 5, Section D - Imminent Hazard - when a Safety Manager determines that conditions or practices exist in any place of employment which could reasonably be expected to

cause death or serious physical harm, he shall inform the affected employees of the danger and shut down the work or process until such danger can be eliminated. Reactivation of the work or process shall be contingent upon the Safety Manager's reinspection and written approval.

33. EPA 40 CFR 261.24 - identifies hazardous waste.

34. OSHA 29 CFR 1910.1025(1)(m) lead and 29 CFR 1910.1027(m)(2) cadmium - Employee information, training, and signage was not provided.

35. OSHA 29 CFR 1910.1025 lead (2)(iv), Cleaning and Replacement, and 1910.1027 cadmium(2)(ii)(3), Cleaning, Replacement, and Disposal - employer shall assure that all protective clothing (i.e., Work Uniforms) is removed at the completion of a work shift only in a change room. The employer shall assure that no employee takes lead-contaminated or cadmium-contaminated protective clothing or equipment from the workplace.

36. OSHA 29 CFR 1910.141(g)(2), Eating and Drinking areas - no employee shall be allowed to consume food or beverages in a toilet room nor in any area exposed to a toxic material.

37. OSHA 29 CFR 1910.1027(6)(v) cadmium - the employer shall not use employee rotation as a method of compliance.

38. OSHA 29 CFR 1910.1025(4)(i)(ii) lead, Mechanical ventilation - 1910.1027(3)(iii) cadmium, Mechanical ventilation - mechanical ventilation wasn't followed by the OSHA regulations.

39. OSHA 1910.1200 Hazardous Communication - The purpose of this section is to ensure that the hazards of all chemicals produced or imported are evaluated, and that information concerning their hazards is transmitted to employee and employees.

40. OSHA 29 CFR 1910.1027(f)(v) cadmium, Methods of Compliance - The employer shall not use employee rotation as a method of compliance.

41. OSHA 1910.1025(c)(6)(iii) lead, Frequency - If the initial monitoring reveals that employee exposure is above the permissible exposure limit the employer shall repeat monitoring quarterly, The employer shall continue monitoring at the frequency until at least two (2) consecutive measurements, taken at least 7 days apart, are below the PEL but at or below the action level.

42. OSHA 1910.1027(d)(3) cadmium, Monitoring Frequency - Additional Monitoring - The employer also shall institute the exposure monitoring required under paragraphs (d)(2)(i) and (d)(3) of this section whenever there has been a change in the raw materials, equipment, personnel, work practices, or finished products that may result in additional employees being exposed to cadmium at or above the action level or in employees already exposed to cadmium at or above the action level being exposed above the PEL.

43. OSHA 29 CFR 1910.1027 Cadmium(f)(v) Methods of Compliance - The employer shall not use employee rotation as a method of compliance.

NOTE: There are only two methods of testing for harmful dusts is air sampling and wipe testing.

Action Planned or Should be Taken:

Disciplinary action needs to be taken towards all Federal Prison Industry and Safety and Health Division management officials Mr. Schwalb, Mr. Novicky, Mr. Stahley, Ms. Keidel, Mr. V. Smith, Ms. Cantwell, any in Quality Assurance Division for UNICOR, Mr. Aragon, Mr. Schultz, Mr. Luna, and Mr. Lee for not working together at the National level before the

initial Computer Recycling Program went into full operation, which would of saved staff, inmates, and staff families from being exposed to lead, cadmium, barium, beryllium, mercury, and arsenic from 1994 through 2005.

Allegation 8 Response:

It was clear during the OIA investigation that I only authorized the glass breaking booth to re-open approximately January 2004, which would allow UNICOR to prepare for additional testing. Once the testing was complete the glass breaking operation would be temporally suspended until the test results were received and reviewed to determine the exposure or non exposure to the inmates and staff. The purpose of keeping the glass breaking operation temporally suspended was UNICOR never complied with OSHA by installing a shower, hand washing area, clean area, and a change of clothing for staff.

Findings Response:

The authority given to Safety staff at any institution comes from the Executive Order 12196, 29 CFR 1960, and Program Statement 1600.08. The reason Safety staff are provided this serious responsibility and authority is to prevent exactly what transpired at USP Atwater, FCI Elkton, FCI Texarkana, FCI Marianna, FCI LaTuna, USP Lewisbergh etc. This prevents any Executive Official from ignoring safety and environmental health standards. Also, prevents Executive Officials from abusing their authority for personal political agendas, production, profit, and keeping inmates working when staff and inmate workers are in an unsafe and healthful or imminent danger working conditions. The documentation from FCI Elkton shows that after three (3) years from the time USP Atwater initially informed Federal Prison Industries of the safety and environmental health conditions associated with the glass breaking operation, UNICOR is still in non-compliance with OSHA standards.

According to Toxicology, OSHA, EPA, and NIOSH the exposure routes are through inhalation, ingestion, skin, and the eyes. Cadmium, lead, and barium may cause local irritation of the eyes, nose, throat, bronchial tubes, skin, kidney damage, increased risk of cancer of the lung, brain damage, neurological damage, bone damage, muscle damage, and prostate cancer at low concentrations or low doses.

Once staff or inmate workers have been removed from the exposure to lead, cadmium, barium, and beryllium a large part of the hazardous metals are extracted through urine and feces. This still allows a large portion of the hazardous metals to attach themselves to bone, kidney, liver, muscle tissue, and other body organs, which repeated exposure will form larger concentrations or larger doses in these areas that will cause health concerns over a period of time, like Asbestos.

The wipe samples conducted by Mr. Korbelak in September 2004, showed the following: highest wipe sampling levels for barium, beryllium, and lead, were found on the table tops in the disassembling areas (Production Lines). The highest wipe sampling levels for cadmium were found on the top of unbroken monitor (screen side up) at the top of a palletized stack of monitors

stored in the disassembling area (Production Line 2). Wipe samples from worker's hands were often below the limit of detection with some showing low levels of barium and lead. The only hand sample with cadmium was in disassembling area (Production Line 3).

On May 9, 2005, samples were taken of the swamp cooler filters on the UNICOR factory roof. These swamp coolers are approximately twenty-five (25) feet above the disassembling areas (Production Lines) and produce approximately 260 filters annually to be replaced and through into the general waste stream, into the local county dumps.

NOTE: The test conducted was RCRA 13 Test Pollutant Metals and the NIOSH standards for Pollutant Metals, which showed the following metals above the regulatory limits: **1.** Metals-Antimony Concentrations 9.1 mg.kg to Regulatory Limit 5.0, **2.** Metals-Arsenic Concentrations 5.3 mg/kg to Regulatory Limit 2.0, **3.** Metals-Cadmium Concentrations 2.6 mg/kg to Regulatory Limit 1.0, **4.** Metals-Chromium Concentrations 35 mg/kg to Regulatory Limit 2.5, **5.** Metals-Copper Concentrations 120 mg/kg to Regulatory Limit 5.0, **6.** Metals-Lead Concentrations 52 mg/kg to Regulatory Limit 2.5, **7.** Metals-Nickel 28 mg/kg to Regulatory Limit 5.0, **8.** Metals-Zinic Concentrations 2200 mg/kg to Regulatory Limit 5.0, and **9.** Metals-Mercury Concentrations 0.51 to Regulatory Limit .01. **(See Attachments 47, 47a, 47b, 47c, & 47d)**

Conclusion Response:

The Office of Internal Affairs clearly identifies the Safety Managers responsibility and authority when faced to make decisions on unsafe and unhealthful or imminent danger working conditions through out this report when it benefits the Federal Prison Industries and the Agency. The OIA report would like to misleading when that state, "These exposures did not, however, rise to the level of being **imminently** dangerous." Then OIA states, "as no **immediate** threat to death or serious physical harm occurred to workers when samples revealed levels exceed the OSHA's PEL and AL. 2. The air sampling results that the OIA reports mentions are not imminently dangers, there an immediate threat. Also, the OIA report miss quotes the standards by using immediate threat to death, instead of imminent threat to death. . I will provide the following definitions from the dictionary:

1. The definition of **IMMINENT** - 1. About to happen; impending - said especially of danger or evil. 2. Overhanging as if about to fall, a threatening peril maybe near or remote, but always with hope that it may be averted.
2. The definition of **IMMEDIATE** - 1. Without delay, instant. 2. Pertaining to a direct perception, intuitive. 3. Acting without the intervention of anything, direct, opposed to mediate.

I believe the definition of **IMMINENT** closely compares to the term **COULD REASONABLY BE EXPECTED TO CAUSE** then immediate. The Safety Department's and Health Services Division's recommendations from July 2002 through October 2005 have not been implemented to allow the Safety Department to reinspect the work or process and put it in writing.

Executive Order 12196, 29 CFR 1960, and Program Statement 1600.08 identify this responsibility to be conduct by the Safety Manager. As you are aware, this doesn't include the

Chief Executive Officer, Factory Manager, UNICOR Central Office, National Safety staff nor the Regional Safety Administrator, which by re-opening the glass breaking booth before all engineering and OSHA standards are implemented without grounds to support their decision is abuse of authority and criminal intent.

Listing of Actual/Apparent Violations: The list below is the violation of Law, Rule, or Regulation, Specific Danger to Public Health or Safety, Abuse of Authority at the Federal Prison Industry Factories, USP Atwater, California, FCI Elkton, Ohio, FCI Texarkana, Arkansas, FCI Marianna, Florida, FCI LaTuna, Texas, and USP Lewisburgh, Pennsylvania.

1. Executive Order 12196 - that Safety Officials shall have sufficient authority to correct unsafe and unhealthy working conditions.
2. OSHA 29 CFR 1960 - that Safety Officials shall have sufficient authority to correct unsafe and unhealthy working conditions.
3. Executive Order 12196 - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights.
4. OSHA 29 CFR 1960 - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights.
5. Program Statement 1600.08, Chapter 1, Page 4, Section g - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights under Executive Oder 12196, 29 CFR 1960, or for participating in the Bureau's Safety and Environmental Health Program.
6. OSHA 29 CFR 1910.1000(e) Administrative or engineering controls must first be determined and implemented whenever feasible, and equipment or technical measures used for this purpose must be approved for each particular use by a competent industrial hygienist or other qualified technically qualified person, which falls to the Safety Manager or an outside contractor.
7. Program Statement 1600.08 Occupational Health and Environmental Safety, Chapter 1, Page 5, Section D - Imminent Hazard - when a Safety Manager determines that conditions or practices exist in any place of employment which **COULD REASONABLY BE EXPECTED TO CAUSE** death or serious physical harm, he shall inform the affected employees of the danger and shut down the work or process until such danger can be eliminated. Reactivation of the work or process shall be contingent upon the Safety Manager's reinspection and written approval.
8. Program Statement 1600.08 Occupational Safety and Environmental Health, Chapter 1, Page 3, Section 5 - Safety Manager - Professional judgement shall be exercised when regulation and policy is not item specific.

Action Planned or Should be Taken:

When did the Executive staff receive authority to supercede the President of the United States Executive Orders, OSHA standards, EPA standards, and Bureau of Prison Policy, which they were knowingly and wilfully violating the laws. Disciplinary action needs to be taken towards all Federal Prison Industry and Safety and Health Division management officials Mr. Schwalb, Mr. Novicky, Mr. Stahley, Ms. Keidel, Mr. V. Smith, Ms. Cantwell, any in Quality Assurance Division for UNICOR, Mr. Aragon, Mr. Schultz, Mr. Luna, and Mr. Lee for subjecting

Safety Manager to restraint, interference, coercion, and taking the Safety Manager's authority to correct unsafe and unhealthy and imminent working conditions.

Allegation 8a Response:

The following Federal Prison Industries staff Mr. Novicky, Mr. Stahley, Ms. Keidel, Ms. Cantwell, Mr. V. Smith, and Safety & Health Division, Mr. Lee, Mr. Schultz and Associate Warden Mr. Luna worked together to discredit me personally and professionally for enforcing the safety and environmental health program concerning UNICOR staff and inmate workers continually being exposed to low concentration or low doses of hazardous metals over a period of time.

Findings Response:

The Federal Prison Industries, Bureau of Prison's, and USP Atwater's has tried to discredit me personally and professionally since approximately July 10, 2002 through present. I will provide the following:

1. Mr. V. Smith called to speak with me about the glass breaking operation being temporally suspended on July 8, 2002. I informed Mr. V. Smith, Recycling Program Coordinator, that the TCLP samples taken of the booth filter and personal air sampling of the inmate employees exceed the EPA and OSHA guidelines. Mr. V. Smith made mention that the institution should provide the inmates respirators and put them back to work. He also mentioned it seems to me that the institution is causing more issues and delays then necessary. **(See Attachments 80 & 80a)**
2. Mr. Stahley called to speak with me and asked if I had spoken with Mr. V. Smith on July 8, 2002? I replied, Yes. Mr. Stahley then asked, what did Mr. V. Smith have to say and what did I tell him? I informed Mr. Stahley, that the glass breaking operation will remain temporally suspended until we meet the EPA and OSHA guidelines. Mr. Stahley replied, are you sure about this. **(See Attachments 81 & 81a)**
3. Mr. Larry Novicky released a memorandum to Mr. Stahley on July 10, 2002 concerning the innuendoes and statements he had heard surrounding the review of the glass breaking operation by the Safety Manager. He also mentioned the verbal transmittal of accusations and/or innuendoes of noncompliance of UNICOR's Atwater operation is unprofessional and is to cease immediately. He then mentioned we can not allow improperly documented or haste govern the operation of our UNICOR operations. **(See Attachment 23)**
4. Mr. Stahley mentioned he informed Mr. Novicky on July 15, 2002, that the glass breaking operation was not going to re-open by next Wednesday, which Mr. Novicky requested. Mr. Stahley then mentioned that Mr. Novicky became very upset and informed him that the glass breaking will re-open until further information had been provided to him in writing. Mr. Stahley also mentioned that Mr. Novicky didn't really care what the Warden thought, didn't you people read my memorandum explaining my position. **(See Attachments 82 & 82a)**
5. I mentioned to that Mr. Novicky deliberately orchestrated misdirection and responsibility for exposing staff and inmate employees to hazardous metals on July 17, 2002. Mr. Stahley began to laugh and mentioned whether or not he was wrong you will not nor do you deserve an apology from Mr. Novicky or anyone else from UNICOR

(See Attachments 83 & 83a)

July 08, 2002

MEMORANDUM FOR TO WHOM IT CONCERNS

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Varney Smith**

At approximately 10:02 a.m., Mr. Smith called and identified himself as the Environmental Advisor for UNICOR. He then requested for the current status on the glass breaking operation.

I informed Mr. Smith, that the glass breaking operation had been temporally suspended.

Mr. Smith then asked, why and for how long?

I informed Mr. Smith, that we had sampled the filters to the internal exhaust system, several area baseline samples, and a inmate personal baseline air sample, which the analytical data received and reviewed led us to take precautionary measures for the staff and inmates. I also informed him, that I couldn't give an exact time frame when the glass operation will re-activate.

Mr. Smith then asked, what were the test results and what procedures are you going to implement?

I informed Mr. Smith, that all test results and initial procedures have been provided to Mr. Stahley in writing.

Mr. Smith then stated, "well I am asking you?"

Mr. Smith also stated, "that he knew the exhaust filters contained lead and the personal sampling taken identified lead also."

I asked Mr. Smith, why are you acting like you don't have any analytical information on the glass breaking operation, but then you mention that you have the information that I am talking to you about?

Mr. Smith then became quiet for the moment. He then asked, if the information that he received was correct?

I replied, "yes."

Mr. Smith then asked, how much lead?

I replied, the filters exceeded the EPA hazardous waste guidelines and the personal air sample exceeded the OSHA Action and Permissible Exposure Limits.

Attachment # 80

Mr. Smith then stated "well it sounds like you need to provide the inmates with a respirator and re-open the glass breaking operation."

I informed Mr. Smith, that providing inmates with respirators was not the only procedure that needed to be implemented and that I do understand the importance of re-activating the glass breaking operation, but the staff and inmate safety comes first.

Mr. Smith then stated, "that UNICOR is currently implementing lead awareness into their current training."

I replied, that formal documented training is good, but there are other procedures that need to be looked into and implemented prior to the glass breaking operation re-opening.

Mr. Smith then asked, what else needs to be done? He then stated, that it seems to me that you are causing more issues and delays then necessary.

I informed Mr. Smith, that the tests were to establish a baseline, which the results have determined that we have some lead and cadmium concerns needing to be addressed. I also informed him (Mr. Smith), that we need to conduct a full OSHA exposure assessment and swab testing to determine the measures needing to be implemented, which will assist in the re-opening of the glass breaking operation.

Mr. Smith asked, what was preventing these additional tests to be conducted?

I informed Mr. Smith, that Mr. Stahley stated, that the amount of 3,400 dollars would have to be approved by Mr. Novicky because he does not have the spending authority of anything that exceeds 2,500 dollars.

Mr. Smith stated, that he did not see where that would be a problem, but Mr. Novicky would be out of the office this week.

I informed Mr. Smith, that he should read EPA 40 CFR 262 and 261.24 and OSHA 29 CFR 1910.1025 and 1910.1027, which would assist him in understanding this delicate situation.

I also informed him (Mr. Smith), that all issues being addressed have been discussed with Warden O'Brien and Mr. Stahley and it is my understanding that we are currently going in the right direction.
Mr. Smith then stated, that he would like to thank me for speaking with him.

Phone conversation ended at 10:25 a.m.

I informed Mr. Luna and Warden O'Brien of the conversation with Varney Smith.

July 08, 2002

MEMORANDUM FOR TO WHOM IT CONCERNS

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Mr. Stahley**

On July 8, 2002, at approximately 10:00 a.m., I received a phone call from Mr. Stahley informing me that I would be receiving a phone call from Varney Smith, UNICOR. The following is for review:

Mr. Stahley informed me, that Varney Smith from UNICOR would be giving me a phone call pertaining to the glass breaking concerns. Mr. Stahley also stated, that he asked him to call me because he didn't want to misinform him (Varney Smith) or have anything misinterpreted or say anything that's not clearly understood.

At approximately 10:30 a.m., I received another phone from Mr. Stahley. The following is for review:

Mr. Stahley asked me, if I had spoken with Mr. Smith?

I replied, "yes."

Mr. Stahley then asked, "what did he have to say?"

I replied, that Mr. Smith basically stated that all we needed to do was provide the inmates with respirators and put them back to work.

Mr. Stahley then asked, "well what did you tell him?"

I mentioned to Mr. Stahley, that I informed Mr. Smith that there are additional measures that currently need to be implemented along with additional testing and until this has been conducted and implemented, the glass breaking operation will continue to be temporally suspended.

Mr. Stahley then asked, "are you sure about this?"

I replied, "yes."

I informed Mr. Stahley, that the direction we are currently going has been approved by Warden O'Brien, which he has informed us both.

I also stated, that the current direction we are going is in the best interest of staff, inmates, institution, and the agency.

I also informed Mr. Stahley, that until Warden O'Brien requests my department to alter or change our current direction, we will need to continue forward as a team.

Mr. Stahley replied, "I guess." He also informed me, that he instructed Phil Rodriguez, Safety Specialist to develop a finding and plan of action memo for Mr. Novicky, UNICOR and that he had not received it yet.

I informed Mr. Stahley, that I had instructed Mr. Rodriguez to hold off until I returned from annual leave.

Mr. Stahley asked, "why?"

I informed Mr. Stahley, that Warden O'Brien requested me to write an Executive memo for his review prior to this information being disseminated out to other institutions currently conducting glass operations, which both of us are aware of this.

I also informed Mr. Stahley, that Warden O'Brien informed us both that nothing will leave this institution without his review and approval.

Mr. Stahley then stated, "so you are not going to provide me with the information that Mr. Novicky is requesting."

I replied, "that's correct," or until Warden O'Brien informs me that the information can be released.

Phone conversation over at 10:37 a.m.

I informed Mr. Luna and Warden O'Brien of the conversation with Mr. Stahley.

July 15, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: L. A. Smith, Safety Manager

SUBJECT: Conversation with Mr. Stahley

On July 15, 2002, I went to Mr. Luna's office to update him on the UNICOR training being provided by the Safety Department. When I entered, I noticed Mr. Stahley was sitting in his office. Mr. Luna was not present. I started to leave when Mr. Stahley requested to speak with me.

Mr. Stahley informed me, that he had called Mr. Novicky at home to express his concerns about the memo (July 10, 2002). He also informed me that he was embarrassed by Warden O'Brien seeing the memo and that he did not appreciate the content of the memo because it implied that he had spoken out of pocket. Mr. Stahley then informed me, that he told Mr. Novicky that he was fucking crazy or didn't he think about the impact of the memo.

I replied, that I didn't care what Mr. Novicky had to say because it can't be changed, but having Warden O'Brien knowing and understanding the truth is all that really matters to me.

Mr. Stahley then stated, "I want to make it clear to you that I had nothing to do with the content in the memo and that I'am appalled with the comments Mr. Novicky had made about you (Mr. Smith)."

Mr. Stahley then mentioned, that he informed Mr. Novicky that the glass breaking operation was not going to re-open by next Wednesday, as he (Mr. Novicky) requested. Mr. Stahley also mentioned, that Mr. Novicky became very upset and informed him that the glass breaking operation would re-open until further information had been provided to him in writing.

Mr. Stahley then stated, "I informed Mr. Novicky that Warden O'Brien has made it clear that the glass breaking operation would remain closed until proper measures are implemented to ensure the safety of staff and inmates." Mr. Stahley also stated, "Mr. Novicky mentioned, he did not really care what Warden O'Brien thought, didn't you people read my (Mr. Novicky) memo explaining my position." He finally mentioned, that he informed Mr. Novicky that maybe he should speak with Warden O'Brien himself.

I asked Mr. Stahley, why he even mentioned the glass breaking operation was going to remain closed to Mr. Novicky in the first place?

Attachment #82

Mr. Stahley replied, that he (Mr. Stahley) thought he (Mr. Novicky) should know.

I then informed Mr. Stahley, that I thought Warden O'Brien was very clear earlier today about loyalty and about nobody releasing information to anyone without him knowing about it first.

Mr. Luna then entered the office and Mr. Stahley stopped discussing the conversation he had with Mr. Novicky.

I then asked Mr. Stahley if was going to mention the conversation he had with Mr. Novicky to Mr. Luna?

Mr. Stahley replied, "yes."

Mr. Stahley only discussed the second part of our conversation with Mr. Luna. Mr. Stahley then left the office.

I informed Mr. Luna, that there was a first part of the conversation that Mr. Stahley didn't mention.

Mr. Luna asked, "what do you mean?"

I then began to explain to Mr. Luna about the (above mentioned) conversation that Mr. Stahley left out.

Mr. Luna just began to shake his head.

I asked Mr. Luna why did Warden O'Brien mention that I needed a lawyer.

Mr. Luna stated, that prior to entering the Warden's office Mr. Stahley had informed Warden O'Brien that he (Mr. Stahley) had heard that I had some personal issues and concerns, which I may need to speak to a lawyer about.

I informed Mr. Luna, that I had mentioned to him (Mr. Luna) about the conversation Mr. Stahley had with Phil Rodriguez and I about him (Mr. Stahley) needing a lawyer last week.

Mr. Luna replied, "I know."

I mentioned to Mr. Luna, why did Warden O'Brien question my loyalty?

Mr. Luna replied, that Mr. Stahley had mentioned a few things to Warden O'Brien prior to me entering his (Mr. O'Brien) office.

I mentioned to Mr. Luna, that if anyone's loyalty should be questioned, it should be Mr. Stahley's.

I also mentioned to Mr. Luna, that the conversation Mr. Stahley had with Mr. Novicky was a prime example of being disloyal to Warden O'Brien.

Mr. Luna replied, "I know."

I informed Warden O'Brien of the conversation that took place with Mr. Stahley.

Attachment #82

July 17, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Mr. Stahley**

On July 17, 2002, I went to see Ms. Graham, ACA coordinator to discuss some budget concerns I had, when I was approached by Mr. Stahley.

Mr. Stahley informed me, "that Mr. Novicky has been trying to speak with Warden O'Brien."

Mr. Stahley also stated, "that Mr. Novicky wants to apologize for the memorandum he wrote, which was written out of anger and frustration."

I asked Mr. Stahley, why would Mr. Novicky want to apologize to Warden O'Brien, when the written statements in the memo were directed towards me personally?

Mr. Stahley began to laugh and stated, "apologize to you, I don't think that would ever happen."

I asked Mr. Stahley, why would you say that, don't I deserve an apology from Mr. Novicky, which he deliberately orchestrated misdirection and responsibility for possibly exposing staff and inmate workers to hazardous metals?

Mr. Stahley began to laugh again and stated, "whether or not he was wrong, you will not nor do you deserve an apology from Larry or anyone else from UNICOR."

I asked Mr. Stahley, does the Executive staff only deserve an apology when they have been falsely accused or professionally discredited.

Mr. Stahley replied, "yes?"

I then mentioned to Mr. Stahley, I bet Mr. Novicky nor anyone else in UNICOR Central Office including yourself would be laughing at my expense if I filed an agency grievance or law suite.

Mr. Stahley became very quiet and stated, "you go ahead and do that, it won't take you far."

Mr. Stahley then stated, "If you file you will be embarrassing yourself and hurting your career."

Attachment #53

I replied, that I think several people inside and outside this institution have already embarrassed the institution, the Bureau, and themselfs by refusing to do the right thing by the staff and inmates.

I informed Mr. Luna and Warden O'Brien of the conversation with Mr. Stahley on the above date.

Attachment #83

6. Mr. Steve Tussey, National Safety Administrator and Mr. John Lee, National Assistant Administrator called the Safety Manager to discuss the executive memorandum being sent out to other institutions on August 28, 2002. Mr. Tussey mentioned that this was going to be his first official **ASS Chewing**. Mr. Tussey then mentioned that Mr. Novicky and others who read this memorandum were pretty upset. I mentioned that Mr. Novicky should be upset for not conducting environmental assessments prior to opening any computer recycling programs. Mr. Tussey also mentioned that this memorandum may have **Union** and **Litigation** issues. I then mentioned that UNICOR was aware of these environmental concerns and it took them **six weeks** or more to look at **shutting down** any of the other operations, which directly effect the health of our staff and inmate employees Bureau-wide. **(See Attachments 18, 18a, 18b, & 18c)**

7. Mr. Lee mentioned I agree with Mr. Korbelak assessment and that you need to protect yourself on December 19, 2002. He then mentioned you have come out smelling like a rose at this point and UNICOR is looking to set you up for the fall if anything goes wrong. He also mentioned you should only be telling UNICOR what OSHA regulation requirements need to be implemented to operate the glass breaking operation safely and you need to stay away from telling UNICOR what environmental controls measures they should implement. He then mentioned it's UNICOR's responsibility to comply with the OSHA guidelines once you continue to oversee the glass breaking operation because of your willingness to help UNICOR continue operating, UNICOR will use your eagerness to help set you up for the fall if anything goes wrong. He also mentioned you are taking the right steps to ensure UNICOR complies with the OSHA guidelines which you have done your job and it protects you from taking the fall for UNICOR not being in compliance with OSHA. He finally mentioned I don't want to see a good person and safety professional be caught up in all the political mess, but most of all having your family hurt in the process. **(See Attachments 31, & 31a)**

8. The concert of discrediting me personally and professionally for addressing safety and environmental health concerns for staff and inmate workers began with Mr. Schultz and Mr. Luna on August 3, 2004, pertaining to the memorandum dated August 2, 2004. This memorandum addressed concerns about hazardous metals that could be toxic to staff and inmates if airborne and during the disassembling process for CPU's/CRT's, it was strongly recommended initial and periodic blood testing be conducted, the Executive Branch rejected recommendations. This memorandum was also sent out on December 31, 2002, May 1, 2003, and July 16, 2003. **(See Attachments 52, 52a, 52b, & 52c)**

9. Mr. Schultz made the following statement to Mr. L. Smith during a meeting on August 3, 2004: 1. Warden Schultz stated, I received a copy of your memorandum from Mr. Luna this morning. 2. Warden Schultz then stated, I also received a response to your memo from John Lee, Central Office. 3. Warden Schultz then stated, these types of memorandums caused you problems in the past, which you think you would have learned your lesson! 4. Warden Schultz then stated, well you've given them ammunition to attack you Leroy, then to attack the concerns associated with the computer recycling program. 5. Warden also stated, this memo is hostile and inflammatory. 6. Warden Schultz then stated, the information in your memorandum, would be like the same information inmates read in the USA Today newspaper, which we are having to address daily. 7. Warden Schultz again stated, this memorandum is very hostile and inflammatory. 8. Warden Shultz replied, it doesn't really matter what I see or read, it's what the Central Office wants to make of your memorandum. 9. Warden Schultz then stated, it doesn't matter if you are right or wrong Leroy, the Central Office will twist your good intentions

around until you come out looking like the problem, not the solution. 10. Warden Schultz then stated, UNICOR is in the business to make money Leroy. 11. **Warden Schultz then stated, you will not send anything outside this institution without my knowledge or you actions will be dealt with!! 12. Warden Schultz also stated, I don't want you to say anything!, this meeting is over with!! 13. Warden Schultz then stated, come back in here and set down now Leroy. 14. Warden Schultz then stated, you are not going to call OSHA or anyone else for that matter, am I making myself clear to you!! 15. Warden Schultz replied, your job is to do what I tell you and nothing more!! (See Attachments 84, 84a, 84b, 84c, 84d, 84e, 84f, & 84g)**

10. Mr. Luna asked me, did you realize how pissed off Warden Schultz was? Mr. Luna then stated, prior to you speaking with the Warden and I, he was going to proceed with disciplinary action towards you. Mr. Luna also stated, "especially after you threatened to call OSHA." Mr. Luna then stated, "nobody disagrees that you perform your job well and probably one of the best Safety Managers in the field, but by doing your job well you haven't understood the political fall out from your actions." **(See Attachments 85 & 85a)**

11. Federal Prison Industries (FPI) and United States Penitentiary, Atwater had a meeting to discuss the need to provided blood and urine testing to inmates working the disassembling areas, shipping, receiving, and handling at the UNICOR factory and outside Warehouse this was conducted on August 4, 2004. I informed Ms. Keidel, that I wasn't addressing we exceeded the OSHA Al or PEL for lead and cadmium, what I am addressing is the short and long term of low concentrations of lead and cadmium exposure to inmate workers. Mr. V. Smith states, it's no different then you or I being exposed to fumes while pumping gas. Ms. Keidel states, I agree, it's like being exposed to second hand smoke! I informed Ms. Keidel and Mr. V. Smith, that each of your scenarios are different, but just as unsafe and unhealthy. I then informed Ms. Keidel and Mr. V. Smith, that low concentrations of gas fumes and second hand smoke has been proven to cause serious health concerns or death, which OSHA clearly identifies low concentrations to lead or cadmium may cause serious health concerns as well. I then asked Ms. Keidel and Mr. V. Smith, that it's acceptable to allow inmates to ingest, absorb, or inhale low concentrations of lead or cadmium over a short or long period of time when CRT's are broken at the work stations and separation points and we are not required to do anything as long as we don't exceed the OSHA action level or permissible exposure limit, which this is acceptable practice by OSHA and UNICOR Bureau-Wide? Ms. Keidel and Mr. V. Smith both replied, Yes, this is acceptable. **(See Attachments 46, 46a, 46b, 46c, & 46d)**

12. I spoke with Warden Schultz about the meeting between Mr. Gonzalez, Ms. Aragon, Ms. Kiedel, Mr. Smith, and myself about the concerns of CRT's being broken in the factory On August 4, 2004. I informed Warden Schultz, that I wasn't aware of the meeting being scheduled with Central Office staff. I informed Warden Schultz, that I thought he made it very clear yesterday that any further discussion or concerns about the UNICOR Factory would be discussed in house only and that the Central Office would not need to be involved. Warden Schultz then stated, Jesse came to me and mentioned that Ms. Keidel and Ms. Cantwell wanted to be part of the discussion before any decisions are made about the CRT cleanup and inmate blood and urine testing to be conducted. I then informed Warden Schultz, that it would of been nice to know the Central Office was going to be part of the meeting, which would of given me time to properly prepare for any questions they may have. Warden Schultz replied, I guess we dropped the ball Leroy. I then informed Warden Schultz, at least when I dropped the ball it wasn't deliberate. I also informed Warden Schultz, that Ms. Cantwell mentioned that a second memorandum was sent

August 3, 2004

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Warden Schultz and Mr. Luna**

On August 3, 2004 at approximately 9:30 a.m., I was called by Mr. Luna, Associate Warden of Operations. Mr. Luna stated, Warden Schultz would like to see in his office immediately.

At approximately 9:40 a.m., I entered Warden Schultz office and he asked me to set down. Mr. Luna was also present.

Warden Schultz stated, I received a copy of your memorandum from Mr. Luna this morning. Warden Schultz then stated, I also received a response to your memo from John Lee, Central Office. Warden Schultz then asked, when were you going to tell me about this Leroy (hostile manner)!?

I informed Mr. Schultz, that I have notified Mr. Booth, Mr. Luna, Mr. Stahley, Ms. Aragon, and himself at least two to three times previously. I informed Warden Schultz, that Mr. Booth, himself, and I have discussed this issue with Larry Novicky, Varney Smith, Cynthia Keidel, John Lee, and Mathew Korbelack, Central Office during previous tela-conferences.

Warden Schultz then stated, I haven't been made aware of this previously, have you Luna.

Mr. Luna replied, No.

I then asked Warden Schultz, would you like me to provide both of you a copy of the memorandums that I sent out to them previously.

Warden Schultz didn't reply. Warden Schultz then stated, these types of memorandums caused you problems in the past, which you think you would have learned your lesson!

I informed Warden Schultz, that my memorandums past and present have only been sent out after I have spoken with Mr. Stahley, Mr. Luna, Ms. Aragon, UNICOR and Safety Central Office staff on several occasions without any plan of action or corrective action to protect the safety and health of staff. I also informed Warden Schultz, that the only lesson I have learned is that profit means more then the safety and health of staff.

Attachment #84

Warden Schultz then stated, well you've given them ammunition to attack you Leroy, then to attack the concerns associated with the computer recycling program.

I replied to Warden Schultz, that the UNICOR Central Office and Safety Central Office have denied the potential of hazardous metal exposure since day one, even after we were able to prove our concerns through proper air sampling and personal air sampling of staff and inmate workers, which they continued to operate other glass breaking operations Bureau-Wide.

Warden Schultz then stated, I can tell by looking at you, you really don't get what I am trying to tell you, do you, even it smacks you in your face.

I replied to Warden Schultz, that I understand that the success of UNICOR is important to the Bureau of Prisons, I know that UNICOR potential exposed staff and inmate workers to hazardous metals one to four years prior to USP Atwater Activating, I know that if this information was to be made public it would be political suicide for an individual, and I know that I have been retaliated, harassed, and coerced by Executive staff for the enforcement and implementation of the safety and environmental program concerning the CRT's.

Warden Schultz then stated, the information in your memo will incite the UNICOR inmates. Warden also stated, this memo is hostile and inflammatory.

I then asked Warden Schultz, how would the information in my memorandum incite UNICOR inmates? I also asked Warden Schultz, what section of my memorandum was hostile and inflammatory?

Warden Schultz then began to read the two paragraphs he felt was hostile and inflammatory. Warden Schultz then stated, the information in your memorandum, would be like the same information inmates read in the USA Today newspaper, which we are having to address daily.

I then informed Warden Schultz, that the section he read sounded like recommended solutions to the safety and environmental health concerns I have addressed in the first paragraph. I also informed Warden Schultz, that I haven't spoken with any of the UNICOR inmates about my safety concerns. I finally informed Warden Schultz, that my ability to identify and correct potential safety and environmental health concerns in the UNICOR Factory has prevented inmate unrest and has prevented warranted and unwarranted litigation against the Bureau of Prisons.

Warden Schultz again stated, this memorandum is very hostile and inflammatory.

I then asked Warden Schultz, do you really interpret my memorandum as being hostile and inflammatory?

Warden Shultz replied, it doesn't really matter what I see or read, it's what the Central Office wants to make of your memorandum.

I informed Warden Schultz, that I clearly understand that I have identified a safety and environmental health concerns with the computer recycling program, I also understand I may have embarrassed you, which I am very sorry. I then informed Warden Schultz, that I am once again being embarrassed, discredited, and retaliated against by the UNICOR and Safety Central Office staff for the enforcement of the safety and environmental health program.

Warden Schultz then stated, it doesn't matter if you are right or wrong Leroy, the Central Office will twist your good intentions around until you come out looking like the problem, not the solution.

I informed Warden Schultz, that I do understand that UNICOR once again is not welling to take technical advise from a Safety Manager in the field, especially if it costs them money, which this has always been the problem over the past 2 ½ years.

Warden Schultz then stated, UNICOR is in the business to make money Leroy. Warden Schultz also stated, do you understand the concept of team and that you need to work with Ms. Aragon and help her along and not be an individual.

I informed Warden Schultz, that I do understand the word team. I then informed Warden Schultz, that I wasn't considered an individual through our EPA inspection of UNICOR, JACOH Accreditation of Health Services, ACA Accreditation, UNICOR's CRT Fire Clean-up, and being told at the last minute (Two Months) that the Safety Department would be replacing the Facilities Department for Program Review, which we received a **Superior Program Review Rating.** I also informed Warden Schultz, that I have accomplished every task that he has assigned me to handle, which the outcome has been outstanding for the institution even when certain Executive and Department Head staff have tried to discredit me personally and professionally.

Warden Schultz became quite. Warden Schultz then stated, you will not send anything outside this institution without my knowledge or you actions will be dealt with!! Warden Schultz also stated, I don't want you to say anything!, this meeting is over with!!

I informed Warden Schultz, that based on his hostile demeanor towards me during this meeting, I can see that I may have offended him and I am again truly very sorry for that. I then began to walk out of Warden Schultz office when I informed him, I will not be intimidated or coerced into not enforcing the safety and environmental health program, before I will allow that to happen I will call OSHA as my last line of defense and we will allow them to tell us what we need to do to protect the staff and inmate workers.

Warden Schultz then stated, come back in here and set down now Leroy. Warden Schultz then stated, you are not going to call OSHA or anyone else for that matter, am I making myself clear to you!!

I informed Warden Schultz, that I will call OSHA if necessary to protect the safety and health of staff and inmate workers, which I am required to do so by Bureau Policy and Federal Law. I then informed Warden Schultz, that I will not be prevented from doing my job because it's not the politically correct thing to do. I also informed Warden Schultz, that an OSHA inspector once said, any person knowingly and wilfully violating or obstructing the intent of the OSHA guidelines, is knowingly and wilfully violating the law, which is criminal intent.

Warden Schultz replied, your job is to do what I tell you and nothing more!! Warden Schultz then asked, what's really bothering you Leroy?

I then informed Warden Schultz, that I am tired of being retaliated and harassed among many other things for the enforcement of the safety and environmental health program.

I then asked Warden Schultz, if I could speak with him one on one?

Warden Schultz replied, yes.

I waited a couple of minutes and Mr. Luna continued to sit down. I again asked Warden Schultz, if I could speak with him one on one, without Mr. Luna being present.

Warden Schultz replied, no, Luna is a new Warden and this will be good experience for him to seat in on.

I informed Warden Schultz, that I understand that Mr. Haro, (Former Regional Director) has retired, but both you promised back in June of 2003, that if I dropped my claim for stress and hostile work environment I would be promoted within the next twelve months, well it's month fourteen and I am still here.

Warden Schultz then stated, if your implying that I am giving you a poor voucher when they call for jobs you have put in for, your wrong. Warden Schultz also stated, every time I receive a call I voucher you out positively and on your own time you can ask Booth.

I then informed Warden Schultz, that I am saying you both first tell me if I continue filing my OWCP claim I will force you all to fight against me and that I may win, but I will lose in the long run, which I took as a threat. I also informed Warden Schultz, that I weighed my options and decided to withdraw my OWCP claim and show you both that I am a team player, but it seems the team left me behind once they scored and I am left with nothing to show for my efforts.

Warden Schultz then stated, I have what, about eleven or twelve other staff that want to be promoted also Leroy. Warden Schultz then asked, who makes those selections Leroy?

I replied to Warden Schultz, that the eleven or twelve department heads have not had to tolerate what I have gone through and the Executive staff misconduct violations have been promoted and moved on, which I am still here. I then informed Warden Schultz, that usually the Institution Warden or the Regional Director makes the finally decision on staff selections.

Warden Schultz then stated, Yes Leroy the Institution Warden and Regional Director, so once I voucher you the decision is left up to them. Warden Schultz also stated, I can't prevent the Institution Warden or Regional Director from asking other Executive staff about you nor can I prevent what they may have to say about you, I can only control what Booth and I have to tell them.

I then informed Warden Schultz, that I hope I am not being vouchered out negatively by other Executive staff that is not in my chain of command because that would be a clear violation of the Merit Promotion System.

Warden Schultz then asked, what else Leroy?

I informed Warden Schultz, that Warden O'Brien and himself failed to protect me by not reporting me being physically assaulted by another staff member, physical and verbal threats to cause physical harm to me personally by another staff member, Executive staff misconduct, Executive staff member endangering the safety and health of staff and inmate workers at USP Atwater, Central Office Executive staff endangering the safety and health staff and inmate workers Bureau Wide, and retaliation, coercion, reprisal, and restraint for enforcing the safety and environmental health program to the Office of Internal Affairs.

Warden Schultz again became quite. Warden Schultz then stated, is that all Leroy!

I then informed Warden Schultz, that Mr. Luna might be able to remember some of our conversations, Shut the fuck up, this an A to B conversation, I'm going give you a negative log entry for poor communication skills, and as long as you and I are still here, it will be my personal pleasure to direct you to ensure you do your job, etc.

Warden Schultz then states, those are strong allegations, Leroy.

I informed Warden Schultz, that I can provide supporting documentation for all my allegations if necessary. I then informed Warden Schultz, that all my allegations fall clearly under classification 1,2, and 3 of the Program Statement, Office of Internal Affairs, which clearly have not been reported to them upon proper notification.

Warden Schultz then changed the subject. Warden Schultz then asked, were you aware of the memorandum Mr. Rodriguez put out to all executive staff pertaining to the West Nile Virus associated with mosquitoes.

I replied to Warden Schultz, I wasn't aware of the memorandum until after the fact.

Warden Schultz then asked, how did you handle the situation.

I informed Warden Schultz, that I sat down with Mr. Rodriguez and let him know that I would like to review any future memorandums addressing issues that may have an impact on the staff and inmate population.

Warden Schultz then stated, that's right Leroy, Rodriguez intentions were good, but his approach was bad. Warden Schultz then stated, I think we finally are understanding each other.

I informed Warden Schultz, that our situations maybe similar, but our approach on handling the issue is quit different.

Warden Schultz then asked, what are you talking about Leroy, I think my point is quit clear, don't you Luna.

Mr. Luna replied, Yes.

I informed Warden Schultz, that I didn't have to resort to retaliation or intimidation tactics to have Mr. Rodriguez work with me.

Warden Schultz again changed the subject. Warden Schultz then asked, how's your wife doing Leroy?

I asked Warden Schultz, what does my wife have to do with this conversation?

Warden Schultz again asked, how's your wife doing?

I informed Warden Schultz, that my wife was doing well personally and if he was asking how she's doing professionally he would need to ask her himself.

Warden Schultz then stated, well she must be happier then she was working down in education.

I again replied to Warden Schultz, that he would have to ask her personally.

Warden Schultz then asked Luna, does your wife work?

Mr. Luna replied, No.

Warden Schultz then stated, see Leroy you have one up on both us, your wife works and she's happy doing her job, which should make everything very happy on the home front.

I informed Warden Schultz, that my wife was affected directly and indirectly by my enforcement of the safety and environmental health program in the UNICOR Factory by Mr. Stahley and Mr. Chavez. I then informed Warden Schultz, that I felt her being moved over to Health Services was to cover up or make right Mr. Chavez's inappropriate comments, which when she displayed interest in the new art class and wiliness to help implement the art program Mr. Chavez shot her down. I also informed Warden Schultz, that she brought to Mr. Chavez's attention that she had an art tape that would be perfect for the class, which Mr. Chavez asked her why she was so interested in helping and if she was willing to bring this tape in for inmates, what else are you welling to do for inmates Ms. Smith. I finally informed Warden Schultz, that my wife is working with people that appear to care and willing to teach her job, which Mr. Stahley and Mr. Chavez very clearly didn't want to do and kept her out of site.

Warden Schultz then stated, then I guess it was good for your wife to move over to Health Services.

I then replied to Warden Schultz, I guess the change of position for her was a good one, because it got her away from Mr. Stahley and Mr. Chavez's supervision or lack of, but I know she had to feel ostracized like I did when you removed my department from Operations and placed us under Custody.

Warden Schultz then stated, working for Booth has been good for you.

I informed Warden Schultz, that's because Mr. Booth has seen first hand how Mr. Stahley, Mr. Luna, and the Central Office staff have tried to discredit me personally and professionally, which we have established a good working relationship.

Warden Schultz then stated, I wouldn't want your job Leroy, it's difficult enough trying to comply with all the Safety Regulations and you still need to be a politician to get others to cooperate and support the program. Warden Schultz also stated, that most staff including Executive staff look at the safety program negatively.

I replied to Warden Schultz, that I don't disagree sir. I then informed Warden Schultz, that Executive staff and staff in general want to be safe and secure, but there are some who really don't care what price others pay as long as their personal or political agenda is met, no harm, no fail.

Warden Schultz then stated, I want to make something very clear before this meeting ends and that is this meeting was not in retaliation for you addressing safety concerns nor will you receive any disciplinary action for this incident. Warden Schultz also stated, this discussion was more of a Mentoring Session do you understand me Leroy.

I replied to Warden Schultz, okay sir.

The meeting ended.

August 3, 2004

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: L. A. Smith, Safety Manager

SUBJECT: Conversation with Mr. Luna AW(O)

On August 3, 2004 at approximately 4:00 P.M., I again apologized to Mr. Luna for any miss understanding about my memorandum addressing CRT concerns. I then informed Mr. Luna, that I have observed accidental breaking of the CRT's at the inmate work stations and the separation points for over a year, which I have continued to address with all parties affected, with no corrective action taken.

Mr. Luna stated, don't worry about Leroy. Mr. Luna then asked, did you realize how pissed off Warden Schultz was?

I informed Mr. Luna, that I understand that Warden Schultz was upset because I didn't make Ms. Aragon or himself aware of the concerns I addressed in my memorandum prior to sending it out to all affected staff including the Central Office, but I have verbally and in writing notified everyone previously and nothing has been corrected to protect the staff and inmates workers to long term, low concentrations to hazardous metal exposure.

Mr. Luna then asked, do you have a minute?

I replied, Yes.

Mr. Luna then asked, me to enter his office and set down.

Mr. Luna then stated, prior to you speaking with Warden and I, he (Warden Schultz) was going to proceed with disciplinary action towards you. Mr. Luna then stated, especially after you threatened to call OSHA.

I informed Mr. Luna, that I expected by Warden Schultz demeanor and continued persistence of calling my memorandum hostile and inflammatory, I was going to receive some typ of disciplinary action. I then informed Mr. Luna, that I apologized to Warden Schultz during the meeting on several occasions for any negative feedback he received from the Central Office, but I will not apologize for the enforcement of the Safety and Environmental Health Program.

I then informed Mr. Luna, that during the meeting I said to Warden Schultz that I would be welling to accept any disciplinary action for any performance or misconduct issues he felt I have violated, but I also mentioned to Warden Schultz that I felt this meeting was hostile and retaliatory towards me for enforcing the Safety and Environmental Health Program and protecting the safety and health of staff and inmate workers.

Mr. Luna then stated, I do recall you mentioning that and that's why you should be very grateful Warden Schultz decided not to followup on his initial decision.

Mr. Luna also stated, nobody disagrees that you perform your job well and probably one of the best Safety Managers in the field, but by doing your job well you haven't understood the political fall out from your actions.

I then informed Mr. Luna, that for over three years UNICOR and Bureau staff have tried to discredit me personal and professionally. I also informed Mr. Luna, the reason for the this retaliation, coercion, and intimidation is directly related to the safety, health, and environmental concerns I identified with the glass breaking operation, which UNICOR subjected staff and inmate workers to hazardous metals at USP Atwater, FCI La Tuna, FCI Texarkana, and FCI Elkton for over one to four years prior to our activation.

Mr. Luna then stated, nobody disagrees there has been safety issues with the UNICOR Recycling Program, but nobody wants their noise rubbed in it.

I informed Mr. Luna, that if executive staff would have come clean and began to correct the safety, health, and environmental hazards associated with the recycling of computers, I wouldn't of had to been forced into making an ethical decisions over a political decision. I then informed Mr. Luna, that UNICOR's reluctance to correct these issues was directly related to cost.

Mr. Luna then stated, I think Warden Schultz and I agreed with you when you mentioned that during our meeting and Warden Schultz told you that UNICOR is in the business to make money.

I then asked Mr. Luna, how much money does one person or a business need before the health and welfare of their workers come first.

Mr. Luna then stated, I don't know Leroy.

Our conversation ended because a body alarm sounded in Unit 1-B.

to them from USP Atwater. I then asked Warden Schultz, are you aware of any second memorandum? Warden Schultz replied, No. Warden Schultz then stated, you will need to get with Jesse and see if he knows anything about it. As Warden Schultz began to leave his office, I informed Warden Schultz, that I had already spoken with Jesse and Jesse informed me that he was not aware of any second memorandum. Warden Schultz replied, I guess things like that just happen Leroy. I informed Warden Schultz, that I hope that the person who sent the memorandum to the Central Office received his approval to do so.
(See Attachment 86)

13. I asked Ms. Aragon if I could get Ms. Keidel's office phone number from her on August 4, 2004? Ms. Aragon replied, yes. Ms. Aragon then asked, why are you needing to speak with Ms. Keidel? I informed Ms. Aragon, that I was curious about the second memorandum sent to the Central Office and I wanted to know who sent it and what the memorandum addressed. Ms. Aragon then replied, I (Ms. Aragon) sent the memorandum to Ms. Keidel. I asked Ms. Aragon, did Warden Schultz know about you sending the memorandum? Ms. Aragon replied, no. Ms. Aragon then stated, why wouldn't I have sent it too them, their my chain of command. I then informed Ms. Aragon, that the memorandum she sent was in response to my first memorandum. I also informed Ms. Aragon, that I only sent it to Mr. Luna, Mr. Gonzalez, and herself, to help make things more clear and to ensure you (Ms. Aragon) that the Safety Department will assist UNICOR anyway we can. I finally informed Ms. Aragon, that I didn't send the memorandum to the Central Office because Warden Schultz made it very clear that no further memorandums will be sent outside the institution without his approval. Ms. Aragon then asked, who did Mr. Schultz tell that too? I replied to Ms. Aragon, that Warden Schultz mentioned that to me yesterday during a meeting we had in his office. Ms. Aragon then stated, I guess that only applies to you, since Mr. Schultz hasn't mentioned anything to me. I informed Ms. Aragon, that seems to be the case every time I address a Safety and Environmental Health concern pertaining to UNICOR. **(See Attachment 87)**

Conclusion:

The OIA report once again is misleading and not providing all the facts to ensure an impartial and comprehensive investigation, which Mr. Schultz, Mr. Luna, Ms. Keidel, and Mr. V. Smith all conspired to discredit me personally and professionally for enforcing the safety and environmental health program associated with the disassembling and housekeeping concerns affecting the inmate workers in the UNICOR factory and warehouse. The teleconference wasn't anything about educating Mr. Gonzalez, Executive Assistant about the UNICOR operation nor was it only about the definition of hazardous spills. The teleconference on August 4, 2004, was scheduled to address my memorandum concerning continued safety and environmental health violations dated August 2, 2004, which we discussed the following: 1. I am very concerned about the Cathode Ray Tubes (CRT's) being broken at the inmate work stations and separation points. 2. The Safety Department essentially identified five major issues. First, the daily accidental breaking of CRT's at the work stations and separation points continue to release hazardous metals into the factory, which staff and inmate workers are subjected to lead, cadmium, barium, and beryllium exposure. Second, factory inmate workers are not currently in the medical surveillance program nor have they received proper training for cleaning up the CRT debris. Third, the CRT debris is currently being swept up dry and disposed in an open galord boxes. Fourth, proper

August 4, 2004

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Warden Schultz**

On August 4, 2004 at approximately 9:50 a.m., I spoke with Warden Schultz about the meeting between Mr. Gonzalez, Ms. Aragon, Ms. Kiedel, Mr. Smith, and myself about the concerns of CRT's being broken in the factory.

I informed Warden Schultz, that I wasn't aware of the meeting being scheduled with Central Office staff. I informed Warden Schultz, that I thought he made it very clear yesterday that any further discussion or concerns about the UNICOR Factory would be discussed in house only and that the Central Office would not need to be involved.

Warden Schultz then stated, Jesse came to me and mentioned that Ms. Keidel and Ms. Cantwell wanted to be part of the discussion before any decisions are made about the CRT cleanup and inmate blood and urine testing to be conducted.

I then informed Warden Schultz, that it would of been nice to know the Central Office was going to be part of the meeting, which would of given me time to properly prepare for any questions they may have.

Warden Schultz replied, I guess we dropped the ball Leroy.

I then informed Warden Schultz, at least when I dropped the ball it wasn't deliberate. I also informed Warden Schultz, that Ms. Cantwell mentioned that a second memorandum was sent to them from USP Atwater. I then asked Warden Schultz, are you aware of any second memorandum?

Warden Schultz replied, No. Warden Schultz then stated, you will need to get with Jesse and see if he knows anything about it.

As Warden Schultz began to leave his office, I informed Warden Schultz, that I had already spoken with Jesse and Jesse informed me that he was not aware of any second memorandum.

Warden Schultz replied, I guess things like that just happen Leroy.

I informed Warden Schultz, that I hope that the person who sent the memorandum to the Central Office received his approval to do so.

Warden Schultz continued to walk away from me and left his office heading out into the main corridor.

August 4, 2004

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: L. A. Smith, Safety Manager

SUBJECT: Conversation with Ms. Aragon

On August 4, 2004, approximately 10:00 a.m., I asked Ms. Aragon if I could get Ms. Keidel's office phone number from her?

Ms. Aragon replied, yes. Ms. Aragon then asked, why are you needing to speak with Ms. Keidel?

I informed Ms. Aragon, that I was curious about the second memorandum sent to the Central Office and I wanted to know who sent it and what the memorandum addressed.

Ms. Aragon then replied, I (Ms. Aragon) sent the memorandum to Ms. Keidel.

I asked Ms. Aragon, did Warden Schultz know about you sending the memorandum?

Ms. Aragon replied, no. Ms. Aragon then stated, why wouldn't I have sent it too them, their my chain of command.

I then informed Ms. Aragon, that the memorandum she sent was in response to my first memorandum. I also informed Ms. Aragon, that I only sent it to Mr. Luna, Mr. Gonzalez, and herself, to help make things more clear and to ensure you (Ms. Aragon) that the Safety Department will assist UNICOR anyway we can. I finally informed Ms. Aragon, that I didn't send the memorandum to the Central Office because Warden Schultz made it very clear that no further memorandums will be sent outside the institution without his approval.

Ms. Aragon then asked, who did Mr. Schultz tell that too?

I replied to Ms. Aragon, that Warden Schultz mentioned that to me yesterday during a meeting we had in his office.

Ms. Aragon then stated, I guess that only applies to you, since Mr. Schultz hasn't mentioned anything to me.

I informed Ms. Aragon, that seems to be the case every time I address a Safety and Environmental Health concern pertaining to UNICOR.

Our conversation ended at this time.

personal protective equipment as well as a wetting agent and HEPA Vacuum are not being used during the cleanup of the CRT debris. Fifth, the galord boxes with the CRT debris remains unsecured and not stored at the satellite staging area, which allows the potential release of hazardous metals into the factory when being transported. 3. The long and short term exposures through inhalation, ingestion, and absorption to lead, cadmium, barium, beryllium etc. may cause serious health concerns. 4. As a precautionary measure the Safety Department strongly recommends initial and periodic blood testing be provided to inmate workers who disassemble or come in contact with the CRT's according to OSHA 29 CFR 1910.1025 Lead and 29 CFR 1910.1027 Cadmium. 5. In addition, proper notification of the health concerns associated with the CRT's should be made to all inmates. 6. The blood testing and notification is paramount to the continued success and regulatory compliance associated with the CRT disassembling process. 7. These types of initiatives should be implemented at other UNICOR glass breaking operations Bureau wide. **(See Attachment 52d)**

Listing of Actual/Apparent Violations: The list below is the violation of Law, Rule, or Regulation, Specific Danger to Public Health or Safety, Abuse of Authority at the Federal Prison Industry Factories, USP Atwater, California, FCI Elkton, Ohio, FCI Texarkana, Arkansas, FCI Marianna, Florida, FCI LaTuna, Texas, and USP Lewisburgh, Pennsylvania.

1. Executive Order 12196 - that Safety Officials shall have sufficient authority to correct unsafe and unhealthy working conditions.
2. OSHA 29 CFR 1960 - that Safety Officials shall have sufficient authority to correct unsafe and unhealthy working conditions.
3. Executive Order 12196 - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights.
4. OSHA 29 CFR 1960 - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights.
5. Program Statement 1600.08, Chapter 1, Page 4, Section g - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights under Executive Oder 12196, 29 CFR 1960, or for participating in the Bureau's Safety and Environmental Health Program.
6. Violation of Policy Program Statement 1210.24, Office of Internal Affairs, Page 4, Section 7 (a), Classification 1 - Work Place Violence and Attempt, conspiracy, obstruction, aiding and abetting, concealment, or failure to report any matter in Classification 1.
7. Violation of Policy Program Statement 1210.24, Office of Internal Affairs, Page 4, Classification 2 - Retaliation, Work Place Violence and Attempt, conspiracy, obstruction, aiding and abetting, concealment, or failure to report any matter in Classification 1.
8. Violation of Policy Program Statement 1210.24, Office of Internal Affairs, Page 4 Classification 3 - Unprofessional conduct (disorderly conduct.)
9. Violation of Policy Program Statement 1600.08, Occupational Safety and environmental Health, Chapter 1, Page 4, Section 7, Chief Executive Officer shall, (e) - Ensure the prompt abatement of unsafe or healthful working conditions.

Action Planned or Should be Taken:

Disciplinary action needs to be taken towards all Federal Prison Industries and Institution Executive staff Ms. Keidel, Mr. V. Smith, Ms. Aragon, Mr. Schultz, and Mr. Luna for discrediting me personally and professionally for ensuring the safety and environmental health concerns associated with the UNICOR computer recycling program were being addressed and enforced. Also, for subjecting me to restraint, interference, harassment, and coercion, for ensuring the safety and environmental health program standards and policies are implemented and enforced. Lastly, for taking my (authority as a Safety Manager) away to correct unsafe and unhealthy and imminent working conditions and allowing the Federal Prison Industries and Safety and Health Division to intervene when the Safety Specialist and myself has more knowledge on the direct concerns associated with the computer recycling program. Again, when did the Executive staff receive authority to supercede the President of the United States Executive Orders, OSHA standards, EPA standards, and Bureau of Prison Policy, which they were knowingly and wilfully violating the laws and abusing their authority.

Allegation 8b Response:

Mr. Schultz gave me a unlawful order to not call OSHA concerning the most recent safety and environmental health violations and recommended blood and urine testing for inmate workers in the factory and warehouse.

Findings Response:

On August 3, 2004, Mr. Schultz, Mr. Luna and I did have a meeting about institution protocol on the release of information without the Warden's knowledge, which pertained to the memorandum addressing concerns about violations of safety and environmental concerns and hazardous metals that could be toxic to staff and inmates if airborne and during the disassembling process for CPU's/CRT's, it was strongly recommended initial and periodic blood testing be conducted dated August 2, 2004. Mr. Schultz, Mr. Luna, Mr. Novicky, Ms. Keidel, Mr.V. Smith, Ms. Cantwell, and Mr. Lee rejected my recommendations. This similar memorandum was on December 31, 2002, May 1, 2003, and July 16, 2003, which Mr. Novicky, Mr. Stahley, and Mr. Schultz agreed to conduct. **(See Attachments 52, 52a, 52c, & 52d).**

I will provide additional information that I quoted Mr. Schultz as stating in the memorandum to Mr. Joseph Gunja, Western Regional Director dated September 30, 2004, which the OIA report doesn't address. On August 3, 2004, I was called by Mr. Luna, Associate Warden of Operations. Mr. Luna stated, Warden Schultz would like to see in his office immediately. I entered Warden Schultz office and he asked me to set down. Mr. Luna was also present. Mr. Schultz stated the following,: Mr. Schultz stated, I received a copy of your memorandum from Mr. Luna this morning. Warden Schultz then stated, I also received a response to your memo from John Lee, Central Office. Warden Schultz then asked, when were you going to tell me about this Leroy (hostile manner)!? Mr. Schultz then stated, I haven't been made aware of this previously, have you Luna. Mr. Luna replied, No. Mr. Schultz then stated, these types of memorandums caused you problems in the past, which you think you would have learned your

lesson! Mr. Schultz stated, well you've given them ammunition to attack you Leroy, then to attack the concerns associated with the computer recycling program. Mr. Schultz then stated, I can tell by looking at you, you really don't get what I am trying to tell you, do you, even if it smacks you in your face. Mr. Schultz then stated, the information in your memo will incite the UNICOR inmates. Warden also stated, this memo is hostile and inflammatory. Mr. Schultz then began to read the two paragraphs he felt was hostile and inflammatory. Mr. Schultz then stated, the information in your memorandum, would be like the same information inmates read in the USA Today newspaper, which we are having to address daily. Mr. Schultz then asked, why didn't you mention any of this to Ms. Aragon while you were in the factory? Warden Schultz then asked, you did see Ms. Aragon in the factory? Warden Schultz then asked, why didn't you mention about your concerns to Ms. Aragon at the time? Mr. Schultz then asked, how long did it take you to type out this memo? Mr. Schultz then asked again, how long did it take you to type this memo, 30 minutes or 1 hour? Mr. Schultz then stated, it took you a few minutes to type this memo, but you couldn't take a few minutes to inform Ms. Aragon of your concerns about her factory. Mr. Schultz then stated, because Ms. Aragon didn't seem to give you the attention you felt you deserved as a Department Head or Safety Manager, you were going to embarrass her through this memo. Mr. Schultz then stated, I think you were trying to embarrass her and I think you were trying to embarrass me as well. Mr. Warden Schultz then asked, why didn't you tell me of your concerns when you seen me out on the compound!? Mr. Schultz then stated, if I wanted someone to quote me policy, I could ask any staff member to do that. I think you deliberately sent this memorandum to embarrass Ms. Aragon and the Central Office, because of personal issues you have with UNICOR. Mr. Schultz again stated, this memorandum is very hostile and inflammatory. Mr. Shultz replied, it doesn't really matter what I see or read, it's what the Central Office wants to make of your memorandum. Mr. Schultz then stated, you allowed me to be blind sided, which now I have to lesson to all the idiots in the Central Office telling me why they disagree with your recommendations. Mr. Schultz again stated, you still don't understand what you have done. Mr. Schultz then stated, it doesn't matter if you are right or wrong Leroy, the Central Office will twist your good intentions around until you come out looking like the problem, not the solution. Mr. Schultz then stated, UNICOR is in the business to make money Leroy. Warden Schultz also stated, do you understand the concept of team and that you need to work with Ms. Aragon and help her along and not be an individual. Mr. Schultz then asked, when have I not supported you on any of the safety issues concerning UNICOR Leroy? Mr. Schultz became quiet. Mr. Schultz then stated, you will not send anything outside this institution without my knowledge or you meeting is over with!! Mr. Schultz then stated, come back in here and set down now Leroy. Mr. Schultz then stated, you are not going to call OSHA or anyone else for that matter, am I making myself clear to you!! actions will be dealt with!! Mr. Schultz also stated, I don't want you to say anything!, this Warden Schultz replied, your job is to do what I tell you and nothing more!! **(See Attachments 88, 88a, 88b, 88c, 88d, 88e, & 88f)**

I will provide additional information that I quoted Mr. Luna as stating in the memorandum to Mr. Joseph Gunja, Western Regional Director dated September 30, 2004, which the OIA report doesn't address. On August 3, 2004, I informed Mr. Luna, that I have observed accidental breaking of the CRT's at the inmate work stations and the separation points for over a year, which I have continued to address with all parties affected, with no corrective action taken. Mr. Luna stated the following: Mr. Luna stated, don't worry about it Leroy. Mr. Luna then asked, did you

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

September 30, 2004

MEMORANDUM FOR JOSEPH E. GUNJA, WESTERN REGIONAL DIRECTOR

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Executive staff Misconduct**

I am official reporting violations of Program Statement 3420.09, Standard of Employee Conduct, abuse of authority, demeaning, threats or intimidation, retaliation, coercion, and interference, for the enforcement of the Bureau's Safety and Environment Health Program. The following is provided for your review:

On August 3, 2004 at approximately 9:30 a.m., I was called by Mr. Luna, Associate Warden of Operations. Mr. Luna stated, Warden Schultz would like to see in his office immediately. At approximately 9:40 a.m., I entered Warden Schultz office and he asked me to set down. Mr. Luna was also present. **Warden Schultz stated, I received a copy of your memorandum from Mr. Luna this morning. Warden Schultz then stated, I also received a response to your memo from John Lee, Central Office. Warden Schultz then asked, when were you going to tell me about this Leroy (hostile manner)!?** I informed Mr. Schultz, that I have notified Mr. Booth, Mr. Luna, Mr. Stahley, Ms. Aragon, and himself at least two to three times previously. I informed Warden Schultz, that Mr. Booth, himself, and I have discussed this issue with Larry Novicky, Varney Smith, Cynthia Keidel, John Lee, and Mathew Korbelack, Central Office during previous tela-conferences. **Warden Schultz then stated, I haven't been made aware of this previously, have you Luna. Mr. Luna replied, No.** I then asked Warden Schultz, would you like me to provide both of you a copy of the memorandums that I sent out to them previously. **Warden Schultz didn't reply. Warden Schultz then stated, these types of memorandums caused you problems in the past, which you think you would have learned your lesson!** I informed Warden Schultz, that my memorandums past and present have only been sent out after I have spoken with Mr. Stahley, Mr. Luna, Ms. Aragon, UNICOR and Safety Central Office staff on several occasions without any plan of action or corrective action to protect the safety and health of staff. I also informed Warden Schultz, that the only lesson I have learned is that profit means more then the safety and health of staff. **Warden Schultz then stated, well you've given them ammunition to attack you Leroy, then to attack the concerns associated with the computer recycling program.** I replied to Warden Schultz, that the UNICOR Central Office and Safety Central Office have denied the potential of hazardous metal exposure since day one, even after we were able to prove our concerns through proper air sampling and personal air sampling of staff and inmate workers, which they continued to operate other glass breaking operations Bureau-Wide. **Warden Schultz then stated, I can tell by looking at you, you really don't get what I am trying to tell you, do you, even if it smacks you in your face.** I replied to Warden Schultz, that I understand that the success of UNICOR is important to the Bureau of Prisons, I know that UNICOR potential exposed staff and inmate workers to hazardous metals one to four years prior to USP Atwater Activating, I know that if this information was to be made public it would be political suicide for an individual, and I know that I have been retaliated, harassed, and coerced by Executive staff for the enforcement and implementation of the safety and

environmental program concerning the CRT's. **Warden Schultz then stated, the information in your memo will incite the UNICOR inmates. Warden also stated, this memo is hostile and inflammatory.** I then asked Warden Schultz, how would the information in my memorandum incite UNICOR inmates? I also asked Warden Schultz, what section of my memorandum was hostile and inflammatory? **Warden Schultz then began to read the two paragraphs he felt was hostile and inflammatory. Warden Schultz then stated, the information in your memorandum, would be like the same information inmates read in the USA Today newspaper, which we are having to address daily.** I then informed Warden Schultz, that the section he read sounded like recommended solutions to the safety and environmental health concerns I have addressed in the first paragraph. I also informed Warden Schultz, that I haven't spoken with any of the UNICOR inmates about my safety concerns. I finally informed Warden Schultz, that my ability to identify and correct potential safety and environmental health concerns in the UNICOR Factory has prevented inmate unrest and has prevented warranted and unwarranted litigation against the Bureau of Prisons. **Warden Schultz then asked, why didn't you mention any of this to Ms. Aragon while you were in the factory? Warden Schultz then asked, you did see Ms. Aragon in the factory?** I informed Warden Schultz, that I did see Ms. Aragon in the factory. **Warden Schultz then asked, why didn't you mention about your concerns to Ms. Aragon at the time?** I informed Warden Schultz, that Ms. Aragon asked how I was doing and I told her fine. I also informed Warden Schultz, that Ms. Aragon also told me that she was very busy and I told her that I wouldn't stop her from taking care of business and I then walked off. I then informed Warden Schultz, that I did inform Mr. Bernthold, Recycling Foreman of my safety concerns. **Warden Schultz then asked, how long did it take you to type out this memo?** I then asked Warden Schultz, what he meant by his question? **Warden Schultz then asked again, how long did it take you to type this memo, 30 minutes or 1 hour?** I then informed Warden Schultz, that I typed the memorandum up in a few minutes. **Warden Schultz then stated, it took you a few minutes to type this memo, but you couldn't take a few minutes to inform Ms. Aragon of your concerns about her factory.** I informed Warden Schultz, that I have addressed this issue in the past on several occasions with Mr. Stahley and Ms. Aragon, which no corrective has been taken. I then informed Warden Schultz, that I felt it was time to address these issues once again in writing. **Warden Schultz then stated, because Ms. Aragon didn't seem to give you the attention you felt you deserved as a Department Head or Safety Manager, you were going to embarrass her through this memo.** I informed Warden Schultz, that I wasn't trying to embarrass her or anyone else for that matter, but I am sure that I am being retaliated against and humiliated right now. **Warden Schultz then stated, I think you were trying to embarrass her and I think you were trying to embarrass me as well.** I informed Warden Schultz, that I am sorry that he believes I tried to embarrass him or Ms. Aragon. I then informed Warden Schultz, that I sincerely apologize for any misunderstanding and any embarrassment that he may have received Central Office from the information being addressed in my memorandum. **Warden Schultz then asked, why didn't you tell me of your concerns when you seen me out on the compound!?** I informed Warden Schultz, that I didn't think of it at the time. I then informed Warden Schultz, that Lieutenant Spencer had called for me over the radio three times to meet him outside the Lieutenants Office which it seemed to be an emergency and when I arrived it was to speak with you about a dead bird that you had found, which you instructed me to call Merced County. I also informed Warden Schultz, that I did disseminate this information previously through all channels and through the appropriate Associate Wardens, which is according to policy. I again informed Warden Schultz, that my intentions were not to embarrass anyone, but to ensure proper cleanup and handling measures were followed by staff and inmate workers when CRT's are accidentally broken in the factory and to ensure we are certain that inmate workers over a period of time are not subjected to any hazardous metals while disassembling and separating CRT's. **Warden Schultz then stated, if I wanted someone to quote me policy, I could ask any staff member to do that. I think you deliberately sent this memorandum to embarrass Ms. Aragon and the Central Office, because of personal issues you have with UNICOR. Warden Schultz again stated, this memorandum is very hostile and inflammatory.** I informed Warden Schultz, that I quote policy and understand clearly how to enforce it, which other staff read policy and ignore it for their own personal agendas or political gain. I then informed Warden Schultz, that I separate my personal feelings from my professional duties as a Safety Manager. I again informed Warden Schultz, that I identified safety and environmental health concerns, which I provided a recommended solution for corrective action. I then asked Warden Schultz, do you really interpret my memorandum as being hostile and inflammatory?

Warden Shultz replied, it doesn't really matter what I see or read, it's what the Central Office wants to make of your memorandum. I then informed Warden Schultz, I guess everyone has missed the big picture. I also informed Warden Schultz, that I understand that UNICOR is in the business to make money, but were both in the business to protect the safety and health of staff and inmate workers, which I think that is the over all point to be made. **Warden Schultz then stated, you allowed me to be blind sided, which now I have to lesson to all the idiots in the Central Office telling me why they disagree with your recommendations. Warden Schultz again stated, you still don't understand what you have done.** I informed Warden Schultz, that I clearly understand that I have identified a safety and environmental health concerns with the computer recycling program, I also understand I may have embarrassed you, which I am very sorry. I then informed Warden Schultz, that I am once again being embarrassed, discredited, and retaliated against by the UNICOR and Safety Central Office staff for the enforcement of the safety and environmental health program. **Warden Schultz then stated, it doesn't matter if you are right or wrong Leroy, the Central Office will twist your good intentions around until you come out looking like the problem, not the solution.** I informed Warden Schultz, that I do understand that UNICOR once again is not welling to take technical advise from a Safety Manager in the field, especially if it costs them money, which this has always been the problem over the past 2 ½ years. **Warden Schultz then stated, UNICOR is in the business to make money Leroy. Warden Schultz also stated, do you understand the concept of team and that you need to work with Ms. Aragon and help her along and not be an individual.** I informed Warden Schultz, that I do understand the word team. I then informed Warden Schultz, that I wasn't considered an individual through our EPA inspection of UNICOR, JACOH Accreditation of Health Services, ACA Accreditation, UNICOR's CRT Fire Clean-up, and being told at the last minute (Two Months) that the Safety Department would be replacing the Facilities Department for Program Review, which we received a Superior Program Review Rating. I also informed Warden Schultz, that I have accomplished every task that he has assigned me to handle, which the outcome has been outstanding for the institution even when certain Executive and Department Head staff have tried to discredit me personally and professionally. **Warden Schultz then asked, when have I not supported you on any of the safety issues concerning UNICOR Leroy?** I informed Warden Schultz, that he has always supported me on safety and environmental health concerns associate with the UNICOR Recycling Program, but Mr. O'Brien and himself have failed to protect me personally from Executive staff misconduct, physical assault, verbal physical threats, intimidation, and retaliation for the enforcement of the safety and environmental health program, which I have reported this to both of you on several occasions. **Warden Schultz then stated, I don't understand your point Leroy!!** I informed Warden Schultz, that according to the Office of Internal Affairs, Program Statement, that when a classification 1 or 2 misconduct occurs by staff or executive staff the Chief Executive Officer is required to immediately report it to their office upon notification, which it doesn't allow Wardens the option to turn the other way. **Warden Schultz became quiet. Warden Schultz then stated, you will not send anything outside this institution without my knowledge or you actions will be dealt with!! Warden Schultz also stated, I don't want you to say anything!, this meeting is over with!!** I informed Warden Schultz, that based on his hostile demeanor towards me during this meeting, I can see that I may have offended him and I am again truly very sorry for that. I then began to walk out of Warden Schultz office when I informed him, I will not be intimidated or coerced into not enforcing the safety and environmental health program, before I will allow that to happen I will call OSHA as my last line of defense and we will allow them to tell us what we need to do to protect the staff and inmate workers. **Warden Schultz then stated, come back in here and set down now Leroy. Warden Schultz then stated, you are not going to call OSHA or anyone else for that matter, am I making myself clear to you!!** I informed Warden Schultz, that I will call OSHA if necessary to protect the safety and health of staff and inmate workers, which I am required to do so by Bureau Policy and Federal Law. I then informed Warden Schultz, that I will not be prevented from doing my job because it's not the politically correct thing to do. I also informed Warden Schultz, that an OSHA inspector once said, any person knowingly and wilfully violating or obstructing the intent of the OSHA guidelines, is knowingly and wilfully violating the law, which is criminal intent. **Warden Schultz replied, your job is to do what I tell you and nothing more!! Warden Schultz then asked, what's really bothering you Leroy?** I then informed Warden Schultz, that I am tired of being retaliated and harassed among may other things for the enforcement of the safety and environmental health program. I then asked Warden Schultz, if I could speak with him one on one? **Warden Schultz replied,**

yes. I waited a couple of minutes and Mr. Luna continued to sit down. I again asked Warden Schultz, if I could speak with him one on one, without Mr. Luna being present. **Warden Schultz replied, no, Luna is a new Warden and this will be good experience for him to seat in on.** I informed Warden Schultz, that I understand that Mr. Haro, (Former Regional Director) has retired, but both you promised back in June of 2003, that if I dropped my claim for stress and hostile work environment I would be promoted within the next twelve months, well it's month fourteen and I am still here. **Warden Schultz then stated, if your implying that I am giving you a poor voucher when they call for jobs you have put in for, your wrong. Warden Schultz also stated, every time I receive a call I voucher you out positively and on your own time you can ask Booth.** I then informed Warden Schultz, that I am saying you both first tell me if I continue filing my OWCP claim I will force you all to fight against me and that I may win, but I will lose in the long run, which I took as a threat. I also informed Warden Schultz, that I weighed my options and decided to withdraw my OWCP claim and show you both that I am a team player, but it seems the team left me behind once they scored and I am left with nothing to show for my efforts. **Warden Schultz then stated, I have what, about eleven or twelve other staff that want to be promoted also Leroy. Warden Schultz then asked, who makes those selections Leroy?** I replied to Warden Schultz, that the eleven or twelve department heads have not had to tolerate what I have gone through and the Executive staff conducted the misconduct violations have been promoted and moved on, which I am still here. I then informed Warden Schultz, that usually the Institution Warden or the Regional Director makes the finally decision on staff selections. **Warden Schultz then stated, Yes Leroy the Institution Warden and Regional Director, so once I voucher you the decision is left up to them. Warden Schultz also stated, I can't prevent the Institution Warden or Regional Director from asking other Executive staff about you nor can I prevent what they may have to say about you, I can only control what Booth and I have to tell them.** I then informed Warden Schultz, that I hope I am not being vouchered out negatively by other Executive staff that is not in my chain of command because that would be a clear violation of the Merit Promotion System. **Warden Schultz then asked, what else Leroy?** I informed Warden Schultz, that Warden O'Brien and himself failed to protect me by not reporting me being physically assaulted by another staff member, physical and verbal threats to cause physical harm to me personally by another staff member, Executive staff misconduct, Executive staff member endangering the safety and health of staff and inmate workers at USP Atwater, Central Office Executive staff endangering the safety and health staff and inmate workers Bureau Wide, and retaliation, coercion, reprisal, and restraint for enforcing the safety and environmental health program to the Office of Internal Affairs. **Warden Schultz again became quite. Warden Schultz then stated, is that all Leroy!** I then informed Warden Schultz, that Mr. Luna might be able to remember some of our conversations, Shut the fuck up, this an A to B conversation, I'm going give you a negative log entry for poor communication skills, and as long as you and I are still here, it will be my personal pleasure to direct you to ensure you do your job, etc. **Warden Schultz then states, those are strong allegations, Leroy.** I informed Warden Schultz, that I can provide supporting documentation for all my allegations if necessary. I then informed Warden Schultz, that all my allegations fall clearly under classification 1,2, and 3 of the Program Statement, Office of Internal Affairs, which clearly have not been reported to them upon proper notification. **Warden Schultz then changed the subject. Warden Schultz then asked, were you aware of the memorandum Mr. Rodriguez put out to all executive staff pertaining to the West Nile Virus associated with mosquitoes.** I replied to Warden Schultz, I wasn't aware of the memorandum until after the fact. **Warden Schultz then asked, how did you handle the situation.** I informed Warden Schultz, that I sat down with Mr. Rodriguez and let him know that I would like to review any future memorandums addressing issues that may have an impact on the staff and inmate population. **Warden Schultz then stated, that's right Leroy, Rodriguez intentions were good, but his approach was bad. Warden Schultz then stated, I think we finally are understanding each other.** I informed Warden Schultz, that our situations maybe similar, but our approach on handling the issue is quit different. **Warden Schultz then asked, what are you talking about Leroy, I think my point is quit clear, don't you Luna. Mr. Luna replied, Yes.** I informed Warden Schultz, that I didn't have to resort to retaliation or intimidation tactics to have Mr. Rodriguez work with me. **Warden Schultz again changed the subject. Warden Schultz then asked, how's your wife doing Leroy?** I asked Warden Schultz, what does my wife have to do with this conversation? **Warden Schultz again asked, how's your wife doing?** I informed Warden Schultz, that my wife was doing well personally and if he was asking how she's doing professionally

he would need to ask her himself. **Warden Schultz then stated, well she must be happier then she was working down in education.** I again replied to Warden Schultz, that he would have to ask her personally. **Warden Schultz then asked Luna, does your wife work?** Mr. Luna replied, No. **Warden Schultz then stated, see Leroy you have one up on both us, your wife works and she's happy doing her job, which should make everything very happy on the home front.** I informed Warden Schultz, that my wife was affected directly and indirectly by my enforcement of the safety and environmental health program in the UNICOR Factory by Mr. Stahley and Mr. Chavez. I then informed Warden Schultz, that I felt her being moved over to Health Services was to cover up or make right Mr. Chavez's inappropriate comments, which when she displayed interest in the new art class an willingness to help implement the art program Mr. Chavez shot her down. I also informed Warden Schultz, that she brought to Mr. Chavez's attention that she had an art tape that would be perfect for the class, which Mr. Chavez asked her why she was so interested in helping and if she was willing to bring this tape in for inmates, what else are you welling to do for inmates Ms. Smith. I finally informed Warden Schultz, that my wife is working with people that appear to care and willing to teach her job, which Mr. Stahley and Mr. Chavez very clearly didn't want to do and kept her out of site. **Warden Schultz then stated, then I guess it was good for your wife to move over to Health Services.** I then replied to Warden Schultz, I guess the change of position for her was a good one, because it got her away from Mr. Stahley and Mr. Chavez's supervision or lack of, but I know she had to feel ostracized like I did when you removed my department from Operations and placed us under Custody. **Warden Schultz then stated, working for Booth has been good for you.** I informed Warden Schultz, that's because Mr. Booth has seen first hand how Mr. Stahley, Mr. Luna, and the Central Office staff have tried to discredit me personally and professionally, which we have established a good working relationship. **Warden Schultz then stated, I wouldn't want your job Leroy, it's difficult enough trying to comply with all the Safety Regulations and you still need to be a politician to get others to cooperate and support the program. Warden Schultz also stated, that most staff including Executive staff look at the safety program negatively.** I replied to Warden Schultz, that I don't disagree sir. I then informed Warden Schultz, that Executive staff and staff in general want to be safe and secure, but there are some who really don't care what price others pay as long as their personal or political agenda is met, no harm, no fail. **Warden Schultz then stated, I want to make something very clear before this meeting ends and that is this meeting was not in retaliation for you addressing safety concerns nor will you receive any disciplinary action for this incident. Warden Schultz also stated, this discussion was more of a Mentioning Session do you understand me Leroy.** I replied to Warden Schultz, okay sir.

On August 3, 2004 at approximately 4:00 P.M., I again apologized to Mr. Luna for any miss understanding about my memorandum addressing CRT concerns. I then informed Mr. Luna, that I have observed accidental breaking of the CRT's at the inmate work stations and the separation points for over a year, which I have continued to address with all parties affected, with no corrective action taken. **Mr. Luna stated, don't worry about Leroy. Mr. Luna then asked, did you realize how pissed off Warden Schultz was?** I informed Mr. Luna, that I understand that Warden Schultz was upset because I didn't make Ms. Aragon or himself aware of the concerns I addressed in my memorandum prior to sending it out to all affected staff including the Central Office, but I have verbally and in writing notified everyone previously and nothing has been corrected to protect the staff and inmates workers to long term, low concentrations to hazardous metal exposure. **Mr. Luna then asked, do you have a minute?** I replied, Yes. Mr. Luna then asked, me to enter his office and set down. **Mr. Luna then stated, prior to you speaking with Warden and I, he (Warden Schultz) was going to proceed with disciplinary action towards you. Mr. Luna then stated, especially after you threatened to call OSHA.** I informed Mr. Luna, that I expected by Warden Schultz demeanor and continued persistence of calling my memorandum hostile and inflammatory, I was going to receive some typ of disciplinary action. I then informed Mr. Luna, that I apologized to Warden Schultz during the meeting on several occasions for any negative feedback he received from the Central Office, but I will not apologize for the enforcement of the Safety and Environmental Health Program. I then informed Mr. Luna, that during the meeting I said to Warden Schultz that I would be welling to accept any disciplinary action for any performance or misconduct issues he felt I have violated, but I also mentioned to Warden Schultz that I felt this meeting was hostile and retaliatory towards me for enforcing the Safety and Environmental Health Program and protecting the safety and health of staff and inmate workers. **Mr. Luna then stated, I do recall you mentioning**

that and that's why you should be very grateful Warden Schultz decided not to followup on his initial decision. Mr. Luna also stated, nobody disagrees that you perform your job well and probably one of the best Safety Managers in the field, but by doing your job well you haven't understood the political fall out from your actions. I then informed Mr. Luna, that for over three years UNICOR and Bureau staff have tried to discredit me personal and professionally. I also informed Mr. Luna, the reason for the this retaliation, coercion, and intimidation is directly related to the safety, health, and environmental concerns I identified with the glass breaking operation, which UNICOR subjected staff and inmate workers to hazardous metals at USP Atwater, FCI La Tuna, FCI Texarkana, and FCI Elkton for over one to four years prior to our activation. **Mr. Luna then stated, nobody disagrees there has been safety issues with the UNICOR Recycling Program, but nobody wants their noise rubbed in it.** I informed Mr. Luna, that if executive staff would have come clean and began to correct the safety, health, and environmental hazards associated with the recycling of computers, I wouldn't of had to been forced into making an ethical decisions over a political decision. I then informed Mr. Luna, that UNICOR's reluctance to correct these issues was directly related to cost. **Mr. Luna then stated, I think Warden Schultz and I agreed with you when you mentioned that during our meeting and Warden Schultz told you that UNICOR is in the business to make money.** I then asked Mr. Luna, how much money does one person or a business need before the health and welfare of their workers come first. **Mr. Luna then stated, I don't know Leroy.**

On August 05, 2004, approximately 11:45 a.m., I spoke with Mr. Booth, about the FOIA and Privacy Act of 1974 request Office of General Counsel, Western Regional Office. **Mr. Booth asked, what the information that I was requesting pertained too.** I informed Mr. Booth, that I was letting him know that I had requested the information, so that he was not feel blind sided once my request was brought to the Executive staff attention. I also informed Mr. Booth, that the information requested was for potential litigation and my OWCP Claim. **Mr. Booth stated, I hope you understand how this may affect you personally and professionally. Mr. Booth then asked, have you let Warden Schultz no about the request of information through the Regional Office.** I informed Mr. Booth, that I understand that this could damage or put my career on hold, but the actions of the Executive staff towards me out way the price of a promotion. I also informed Mr. Booth, that I have done everything the Warden Schultz and Mr. Haro asked of me and I am still here, which tells me I kept my word and they lied to get what they wanted from me. I then informed Mr. Booth, that I haven't informed Warden Schultz and that I felt it should come directly from him, because of what happen during our last conversation a couple weeks ago. **Mr. Booth then stated, I hope this doesn't affect you adversely.** I informed Mr. Booth, that I have already been affected adversely for enforcing the Safety and Environmental Health Program. I also informed Mr. Booth, the Executive staff tried so hard to coerce me into believing that I am solely at fault for all my problems, instead of them who failed to follow policy and the law, which most of all they failed to protect me personally and professionally. **Mr. Booth then asked, remember when I mentioned to you about perception and how perception can make or break a career?** I replied to Mr. Booth, yes, I do. I then informed Mr. Booth, that I also remember he also mentioned that Warden Schultz could see my actions as insubordination. **Mr. Booth then stated, you filing this FOIA request may fall directly under those type of perceptions.** I then asked Mr. Booth, if you tell me that all what has happen to me personally and professionally is solely my fault, I will with draw my FOIA request and never bring it up again? **Mr. Booth replied, I wasn't here when things happen initially Leroy, but I have supported you since I have arrived.** I informed Mr. Booth, that when you arrived here Mr. Stahley, Mr. Luna, and the Central Office tried to discredit me on several occasions, but I was able to prove them wrong with all their allegations. **Mr. Booth then stated, I have always supported you and I always will.** I then informed Mr. Booth, that I am willing to take my chances to correct the wrongs that Mr. Rodriguez, my family, and myself have gone through in the past two to three years. **Mr. Booth then stated, I understand.**

On August 09, 2004, approximately 8:30 a.m., I asked Mr. Booth, if Warden Schultz or Mr. Gonzalez mentioned anything to him about the potential CRT disassembly, inmate blood and urine testing, conversation with Central Office, and Warden Schultz. **Mr. Booth replied, that Jesse (Mr. Gonzalez) mentioned a few things and that you where out of line about sending the memorandum outside the Institution without Warden Schultz knowing.** I informed Mr. Booth, that I apologized to Warden Schultz and that I ensured him that I would not send

anything out to the Central Office in the future without informing Warden Schultz first. I then informed Mr. Booth, that we all had addressed these issues in the past, which Mr. Stahley, Mr. Novicky, and Warden Schultz agreed to have the additional testing performed to ensure inmates handling and disassembling the CRT's weren't being exposed to hazardous metals. **Mr. Booth replied, I don't disagree with you, but I wasn't aware the additional tests weren't conducted. Mr. Booth then stated, I informed Jesse that I would speak with you about sending correspondence outside the Institution without informing Warden Schultz. Mr. Booth also stated, I mentioned to Jesse that these additional tests were previously agreed upon by UNICOR Central Office and Stahley, AW(I&E).** I informed Mr. Booth, that I mentioned to Mr. Luna, Mr. Gonzalez, and Warden Schultz that I addressed these issues previously and that I could show them copies of the memorandums sent out to everyone including them or through them, which nobody had anything to say negatively in the past. **Mr. Booth then stated, I think your memorandum caught everyone by surprise, which I know that wasn't your intention.** I informed Mr. Booth, that I feel this is retaliation once again for enforcing the Safety and Environmental Health Program. **Mr. Booth replied, I disagree with you Leroy.** I then asked Mr. Booth, if this is not retaliation or harassment, why don't those who violate policy, OSHA guidelines, or the Law receive any disciplinary action for their actions? **Mr. Booth replied, I can't tell you why things have happen the way they have. Mr. Booth then stated, I will tell you Warden Schultz and other Executive make decisions every day that are popular and unpopular, which you and I are to understand and support no matter what our personal feelings are.** I then asked Mr. Booth, if I was anyone other then a white male would this type of retaliation and harassment continue after it being reported the first or second time? **Mr. Booth replied, I don't think being white or any other ethnic group even needs to be brought up as part of this conversation. Mr. Booth then stated, I think you need to remember who the engineer is and if you are going in his direction or your own.** I asked Mr. Booth, haven't I performed my duties as a Department Head and Safety Manager exceptionally well over the past four years? **Mr. Booth replied, Yes.** I then asked Mr. Booth, have I ever been disloyal or disrespectful to Executive staff and especially Warden Schultz? **Mr. Booth replied, No.** I then asked Mr. Booth, then why am I being retaliated and harassed for enforcing the Safety and Environmental Health Program. **Mr. Booth replied, I don't believe your being harassed for doing your job, but I think your being asked to look at how everything is affected by the issues you have addressed over the last few years. Mr. Booth then stated, I know you have done an outstanding job, your log entries in the past and in the present show that, but some things are out of our control and the sooner we except that the better off we are.** I informed Mr. Booth, that I accept the Bureau pays me to conduct myself professionally and ethically. I then informed Mr. Booth, that I accept the Bureau pays me to perform my duties exceptionally well and ensure staff and inmate workers have a safe and healthy working and leaving environment, which if being politically correct forces me to question my integrity, loyalty, and honor as a person and a Bureau employee then I am better off being retaliated and harassed, then being someone I am not. **Mr. Booth then stated, we all have to make personal and career decisions we have to be able to live with, I hope that I am helping you to make yours, I think you will be a good Associate Warden some day.** I then thanked Mr. Booth for speaking with me and went to the Safety Office.

The Chief Executive Officer recently brought my wife up during our conversation addressing the current concerns of the UNICOR Computer Recycling Program, which was very intimidating, coercive, and hostile. My wife has been retaliated against in the past because I have continued to address safety and environmental health concerns associated with the UNICOR Recycling Program, which Executive staff refuse to correct. I fear reprisal towards my wife by the Institution Executive staff. I also fear continued retaliation, harassment, and reprisal towards myself. I fear for our (wife and I) safety and well being while these issues are being investigated.

cc: **The Honorable Congressman, Dennis Cardoza**
Senator Dianne Feinstein
Office of Internal Affairs
Office of Special Counsel
Office of Inspector General

realize how pissed off Warden Schultz was? Mr. Luna then asked, do you have a minute? I replied, Yes. Mr. Luna then stated, prior to you speaking with Warden and I, he (Warden Schultz) was going to proceed with disciplinary action towards you. Mr. Luna then stated, especially after you threatened to call OSHA. Mr. Luna then stated, I do recall you mentioning that and that's why you should be very grateful Warden Schultz decided not to followup on his initial decision. Mr. Luna also stated, nobody disagrees that you perform your job well and probably one of the best Safety Managers in the field, but by doing your job well you haven't understood the political fall out from your actions. Mr. Luna then stated, nobody disagrees there has been safety issues with the UNICOR Recycling Program, but nobody wants their nose rubbed in it. Mr. Luna then stated, I think Warden Schultz and I agreed with you when you mentioned that during our meeting and Warden Schultz told you that UNICOR is in the business to make money. Mr. Luna then stated, I don't know Leroy. **(See Attachments 85 & 85a)**

On August 9, 2004, Mr. Alan Booth, Associate Warden and I discussed the additional inmate blood and urine testing, which was agreed on by Mr. Novicky, Mr. Stahley, and Mr. Schultz. Mr. Booth mentioned, that he agreed with me, but he wasn't aware the additional tests weren't conducted. Mr. Booth also mentioned, that he told Mr. Gonzalez that these additional tests were previously agreed upon by UNICOR Central Office and Mr. Stahley. I informed Mr. Booth, that I mentioned to Mr. Luna, Mr. Gonzalez, and Mr. Schultz that I addressed these issues previously and that I could show them copies of the memorandums sent out to everyone including them or through them, which nobody had anything to say negatively in the past. **(See Attachments 89 & 89a)**

Conclusion Response:

It's very clear that Mr. Schultz and Mr. Luna are misleading and are conspiring to conceal the truth. Mr. Schultz never mentioned to me, that I should inform OSHA that I developed the procedures, which the only UNICOR procedures that have been developed were implemented on June 1, 2003, by Federal Prison Industries. This procedure is called UNICOR Cathode Ray Tube Procedures. I never walked out of this meeting or any other meeting with Mr. Schultz or Mr. Luna present, especially abruptly. I only proceeded to leave Mr. Schultz office after he informed me, that I will not to send anything outside this institution without his knowledge or my actions will be dealt with!!, I don't want you to say anything!!, this meeting is over with!! It is evident that Mr. Schultz intentionally gave me a direct order not to call OSHA, with the documentation I have provided and the convenient lack of recollection Mr. Schultz and Mr. Luna have pertaining to their actions. They both seem to confuse themselves with the statements they provided to OIA. Mr. Schultz and Mr. Luna were more worried about the political fall out from me enforcing the safety and environmental regulations, then they were about the safety and health of staff and inmates.

Listing of Actual/Apparent Violations: The list below is the violation of Law, Rule, or Regulation, Specific Danger to Public Health or Safety, Abuse of Authority at USP Atwater.

1. Executive Order 12196 - that Safety Officials shall have sufficient authority to correct unsafe and unhealthy working conditions.

August 09, 2004

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: L. A. Smith, Safety Manager

SUBJECT: Conversation with Mr. Booth, AW(C)

On August 09, 2004, approximately 8:30 a.m., I asked Mr. Booth, if Warden Schultz or Mr. Gonzalez mentioned anything to him about the potential CRT disassembly, inmate blood and urine testing, conversation with Central Office, and Warden Schultz.

Mr. Booth replied, that Jesse (Mr. Gonzalez) mentioned a few things and that you where out of line about sending the memorandum outside the Institution without Warden Schultz knowing.

I informed Mr. Booth, that I apologized to Warden Schultz and that I ensured him that I would not send anything out to the Central Office in the future without informing Warden Schultz first. I then informed Mr. Booth, that we all had addressed these issues in the past, which Mr. Stahley, Mr. Novicky, and Warden Schultz agreed to have the additional testing performed to ensure inmates handling and disassembling the CRT's weren't being exposed to hazardous metals.

Mr. Booth replied, I don't disagree with you, but I wasn't aware the additional tests weren't conducted. Mr. Booth then stated, I informed Jesse that I would speak with you about sending correspondence outside the Institution without informing Warden Schultz. Mr. Booth also stated, I mentioned to Jesse that these additional tests were previously agreed upon by UNICOR Central Office and Stahley, AW(I&E).

I informed Mr. Booth, that I mentioned to Mr. Luna, Mr. Gonzalez, and Warden Schultz that I addressed these issues previously and that I could show them copies of the memorandums sent out to everyone including them or through them, which nobody had anything to say negatively in the past.

Mr. Booth then stated, I think your memorandum caught everyone by surprise, which I know that wasn't your intention.

I informed Mr. Booth, that I feel this is retaliation once again for enforcing the Safety and Environmental Health Program.

Mr. Booth replied, I disagree with you Leroy.

I then asked Mr. Booth, if this is not retaliation or harassment, why don't those who violate policy, OSHA guidelines, or the Law receive any disciplinary action for their actions?

Mr. Booth replied, I can't tell you why things have happen the way they have. Mr. Booth then stated, I will tell you Warden Schultz and other Executive make decisions every day that are popular and unpopular, which you and I are to understand and support no matter what our personal feelings are.

I then asked Mr. Booth, if I was anyone other then a white male would this type of retaliation and harassment continue after it being reported the first or second time?

Mr. Booth replied, I don't think being white or any other ethnic group even needs to be brought up as part of this conversation. Mr. Booth then stated, I think you need to remember who the engineer is and if you are going in his direction or your own.

I asked Mr. Booth, haven't I performed my duties as a Department Head and Safety Manager exceptionally well over the past four years?

Mr. Booth replied, Yes.

I then asked Mr. Booth, have I ever been disloyal or disrespectful to Executive staff and especially Warden Schultz?

Mr. Booth replied, No.

I then asked Mr. Booth, then why am I being retaliated and harassed for enforcing the Safety and Environmental Health Program.

Mr. Booth replied, I don't believe your being harassed for doing your job, but I think your being asked to look at how everything is affected by the issues you have addressed over the last few years. Mr. Booth then stated, I know you have done an outstanding job, your log entries in the past and in the present show that, but some things are out of our control and the sooner we except that the better off we are.

I informed Mr. Booth, that I accept the Bureau pays me to conduct myself professionally and ethically. I then informed Mr. Booth, that I accept the Bureau pays me to perform my duties exceptionally well and ensure staff and inmate workers have a safe and healthy working and leaving environment, which if being politically correct forces me to question my integrity, loyalty, and honor as a person and a Bureau employee then I am better off being retaliated and harassed, then being someone I am not.

Mr. Booth then stated, we all have to make personal and career decisions we have to be able to live with, I hope that I am helping you to make yours, I think you will be a good Associate Warden some day.

I then thanked Mr. Booth for speaking with me and went to the Safety Office.

2. OSHA 29 CFR 1960 - that Safety Officials shall have sufficient authority to correct unsafe and unhealthy working conditions.

3. Executive Order 12196 - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights.

4. OSHA 29 CFR 1960 - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights.

5. Program Statement 1600.08, Chapter 1, Page 4, Section g - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights under Executive Oder 12196, 29 CFR 1960, or for participating in the Bureau's Safety and Environmental Health Program.

6. Violation of Policy Program Statement 1210.24, Office of Internal Affairs, Page 4, Section 7 (a), Classification 1 - Work Place Violence and Attempt, conspiracy, obstruction, aiding and abetting, concealment, or failure to report any matter in Classification 1.

7. Violation of Policy Program Statement 1210.24, Office of Internal Affairs, Page 4, Classification 2 - Retaliation, Work Place Violence and Attempt, conspiracy, obstruction, aiding and abetting, concealment, or failure to report any matter in Classification 1.

8. Violation of Policy Program Statement 1210.24, Office of Internal Affairs, Page 4 Classification 3 - Unprofessional conduct (disorderly conduct.)

9. Violation of Policy Program Statement 3420.09, Standards of Employee Conduct, Page 9, Section (3) - An employee may not use physical violence, **threats** or **intimidation** towards fellow employees, family members of employees, Section (4) - An employee may not use profane, obscene, or otherwise **abusive language** when communicating with fellow employees, or others, Employees shall conduct themselves in a manner which will not be **demeaning** to fellow employees, or others. Section (7) - Employees shall not participate in conduct which would lead a reasonable person to question the employee's **impartiality**.

Action Planned or Should be Taken:

Disciplinary action needs to be taken towards Mr. Schultz and Mr. Luna. The direct order Mr. Schultz gave me to not call OSHA was an official misconduct issues and should be handle as such. To handle this as a performance issue continues to show the Agency is conspiring to conceal the truth and Executive staff are untouchable. Mr. Luna failed to report the incident between Mr. Schultz and I to the Office of Internal Affairs, which his actions are an official misconduct issue.

Allegation 8c Response:

All staff have the right to report unsafe and unhealthful working conditions. A Federal Prison Industries staff member at USP Atwater reported that Ms. Aragon gave him a direct order to reopen the glass breaking operation. The employee received profane and abusive language from Mr. Stahley by refusing to enter an unsafe and unhealthful working environment.

Findings Response:

Ms. Aragon initially gave the employee a directive to reopen the glass breaking operation

at the new location. The employee tried to explained to Ms. Aragon that the Safety Department did not consider the glass breaking operation to be safe for staff and inmates. I informed the employee that the glass breaking operation was not to reopen until I allowed them to. The employee informed Ms. Aragon about the conversation with me and Ms. Aragon then gave him a direct order re-open the glass breaking operation anyways. The employee again tried to explain to Ms. Aragon that serval safety and environmental control measures still need to be in place or installed. Ms. Aragon called for Mr. Stahley to come to the glass breaking booth area, upon Mr. Stahley's arrival Ms. Aragon began to explain to him of the situation. Ms. Aragon again gave the employee to reopen the glass breaking operation. Mr. Stahley informed the employee that the safe and environmental control measures did not need to be implemented, because the roll-up door would be closed. Then Ms. Aragon told the employee that he doesn't take orders from Safety and that she was his direct line supervisor he would need to listen to her. The employee informed Ms. Aragon and Mr. Stahley that he would like to speak with the Safety Department. Mr. Stahley then became aggressive and gave the employee a direct order to reopen the glass breaking operation and that he would be operating the glass booth with the roll-up door closed. The employee also was being required to supervise the inmates in this area with the roll-up doors down and without a respirator to protect him from the hazardous metals. Mr. Stahley then in an aggressive manner pointed his finger in the employee's face telling him "Step back from me just step back." **(See Attachments 90 & 90a)**

At no point did the employee agree to work in the glass breaking area without proper safety and environmental control measures in place. At this time the employee called the Safety Department to inform them of what transpired. The employee also notified Mr. Schultz and told him that he was not refusing to do his job, but wanted to work his job in a safe manner for staff and inmates. The employee also told Mr. Schultz about what transpired with Mr. Stahley and Ms. Aragon, which Mr. Schultz replied, don't worry and that if he (Mr. Schultz) had to work in the glass breaking area with the door closed, he would be there with him. I held a meeting the next day to address the employee concerns and the on going safety and environmental control measures that still needed to be implemented. This meeting was held with Mr. Stahley, Facilities staff, and the employee. Mr. Stahley asked, what needs to be done in order to reopen the glass breaking operation, which facilities staff explained what was needed to make the glass breaking area into a negative pressure room for the booth operation to run properly and safely for staff and inmates. **(See Attachments 90 & 90a)**

Conclusion Response:

The employee was given a direct order to work in an unsafe and unhealthful working environment. The employee was not being provided proper personal protective equipment (i.e. protective clothing or respirator etc.) to even work in the glass breaking booth area, especially the roll-up door being closed. Mr. Stahley and Ms. Aragon knowingly and wilfully endangered the safety and health of the employee and inmate workers. Mr. Stahley and Ms. Aragon were informed by Facilities and myself of the safety and environmental control measures needed to be implemented and installed prior to this incident occurring. Mr. Stahley and Ms. Aragon created a hostile work environment.

TO: The Honorable Dennis Cardoza
Member Of The House Of Representatives
2222 M Street
Suite 305
Merced CA 95340

FROM: Angel J Garcia (UNICOR Recycle Foreman)

SUBJECT: UNICOR U S P Atwater

DEC.15, 2005

I am aware that the Office of Internal Affairs was in the Institution investigating the UNICOR recycling operation program. If I was given the opportunity to be interviewed by the Office of Internal Affairs investigator I would of provided the following information on the program:

On or about approximately Dec. 11, 2003 I was approached by Mrs. Aragon (Unicor Factory Manager) to resume breaking C.R.T Tubes in a room where our safety department did not consider safe for staff or inmates. I was advised by Mr. Leroy Smith (Safety Manager) not to begin the breaking of glass until the Safety Department allowed us too. I advised Mrs. Aragon about this and she than gave me a direct order to break glass. I than again explained to her that we still needed to install some plastic curtains in front of the entrance of the glass room, seal walls, seal air ducts, install a telephone line(in case of inmate duress and staff safety), and staff needed to have a body alarm issued to them for that certain work area. She was very upset with my response to her direct order and she than called A.W. Stahley, Tom, via radio, to the rear of the factory floor. When A.W. Stahley arrived she explained what I had advised her of. She than again gave me a direct order in front of Mr. Stahley telling me to break glass and that I did not need any curtains and that we would be breaking glass with the doors closed. I again told them that Safety still didn't consider this a safe area to work in under these conditions. Mrs. Aragon told me that I didn't take orders from Safety and since she was my direct supervisor I had to listen to her. I told them that I had to call Safety and let them know. Mr. Stahley gave me a direct order in a loud tone voice to go break glass and that I would be doing it with the doors closed at this time I wasn't given a respirator . My response was that I would call safety first and allow them to decide what would be done. In a loud tone voice he looked at me and pointed his finger in my face telling me "STEP BACK FROM ME JUST STEP BACK". Mrs. Aragon put her hands in front of him and told me to walk away from them and that she would talk to Mr. Sathley. At this time I called our Safety Department to let them know what had taken place. On the end of this work day I arrived to speak with Warden Shultz, Paul, and let him know that I wasn't refusing to do my job but to perform my job in a safe manner for staff and inmates. I told him in how both A.W. Stahley and Mrs. Aragon acted towards me and that I had to do what our Safety Department wanted us to do. He advised me not to worry and that if I had to work in the glass room with the door closed, he would be there with me. I felt better when I left his office knowing he would do something about what had occurred.

DEC.15, 2004

CONTINUED:

On or about approximately Dec. 12, 2003 Leroy Smith (Safety Manager) held an emergency meeting pertaining to my concern. It was held on the rear dock where the glass breaking area is at. I recall these staff members being present: A.W. Stahley, Mrs. Aragon, myself Angel J. Garcia for UNICOR, Louis Martin, Randy McCarty, Gordon for Facilities, and Leroy Smith for the Safety Department. A.W. Stahley asked what was it that had to be done in order to get the glass breaking operation going. At that time the facilities department went into explaining what had to be done in order to make the glass room into a negative pressure room for it to work properly and safely. At the end of the meeting, A.W. Stahley told Mrs. Aragon to do what had to be done in order to purchase all the supplies and to pay the over time to get the work done.

CC: Leroy Smith

Listing of Actual/Apparent Violations: The list below is the violation of Law, Rule, or Regulation, Specific Danger to Public Health or Safety, Abuse of Authority at USP Atwater.

1. Executive Order 12196 - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights.
2. OSHA 29 CFR 1960 - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights.
3. Program Statement 1600.08, Chapter 1, Page 4, Section g - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights under Executive Oder 12196, 29 CFR 1960, or for participating in the Bureau's Safety and Environmental Health Program.
4. Violation of Policy Program Statement 1600.08, Occupational Safety and environmental Health, Chapter 1, Page 4, Section 7, Chief Executive Officer shall, (e) - Ensure the prompt abatement of unsafe or healthful working conditions.
5. Program Statement 1600.08 Occupational Health and Environmental Safety, Chapter 1, Page 24, Section P(1) - Personal Protective Equipment - shall be provided and worn in accordance with 29 CFR, OSHA 1926, Construction Standards, or as deemed necessary by the Safety Manager.
6. Program Statement 1600.08 Occupational Health and Environmental Safety, Chapter 1, Page 24, Section P(6) - Personal Protective Equipment - Purchase approvals of such equipment shall be routed through the Safety Department to insure it meets all current testing and certification requirements.
7. OSHA 29 CFR 1910.132 General requirements for Personal Protective Equipment and Subpart I Appendix B - Hazard Assessment - Harmful Dust.
8. OSHA 29 CFR 1910.134 Respiratory Protection and Respirator Cleaning Procedures
9. Violation of Policy Program Statement 1210.24, Office of Internal Affairs, Page 4, Section 7 (a), Classification 1 - Work Place Violence and Attempt, conspiracy, obstruction, aiding and abetting, concealment, or failure to report any matter in Classification 1.
10. Violation of Policy Program Statement 1210.24, Office of Internal Affairs, Page 4, Classification 2 - Retaliation, Work Place Violence and Attempt, conspiracy, obstruction, aiding and abetting, concealment, or failure to report any matter in Classification 1.
11. Violation of Policy Program Statement 1210.24, Office of Internal Affairs, Page 4 Classification 3 - Unprofessional conduct (disorderly conduct.)
12. Violation of Policy Program Statement 3420.09, Standards of Employee Conduct, Page 9, Section (3) - An employee may not use physical violence, **threats** or **intimidation** towards fellow employees, family members of employees, Section (4) - An employee may not use profane, obscene, or otherwise **abusive language** when communicating with fellow employees, or others, Employees shall conduct themselves in a manner which will not be **demeaning** to fellow employees, or others. Section (7) - Employees shall not participate in conduct which would lead a reasonable person to question the employee's **impartiality**.

Action Planned or Should be Taken:

Criminal action needs to be taken against Mr. Stahley and Ms. Aragon for giving unlawful direct orders that endangered the safety and health of the employee and inmates. Also, criminal

action needs to be taken against Mr. Schultz for failure to report this incident to the Office of Internal Affairs for further investigation and for failure ensure that prompt abatement of the unsafe or healthful working conditions. Mr. Schultz comment to the employee was unprofessional and official misconduct to even imply the glass breaking operation was safe for him to even work in with safety and environmental control measures not implemented and installed, which was identified previously before the glass breaking operation was to reopen.

Allegation 8d Response:

An Federal Prison Industries inmate worker advise his immediate supervisor that he was intimidated by Ms. Aragon for not wanting to work the glass breaking operation. Ms. Aragon threatened to reduce the inmates pay a grade 3 to a grade 4 if he didn't work the glass breaking operation.

Findings Response:

The inmate approached his immediate supervisor and told him that he didn't want to in the glass breaking room, because he didn't feel safe working in there. The inmate continued to explain that he didn't agree to have his blood drawn to work the glass breaking room. The inmate was request to see Ms. Aragon in her office, which Ms. Rijos was present. Ms. Aragon told the inmate that he would be working the glass breaking operation. The inmate asked Ms. Aragon why would he be working the glass breaking room if he didn't request to. Ms. Aragon told the inmate since he didn't have a G.E.D. she would be able to take his grade 3 pay status away and reduce it to a grade 4 pay status with less money in his check. The inmate felt threatened by Ms. Aragon's statements of intent to reduce his pay if the inmate doesn't follow what Ms. Aragon told him. The inmate also told his immediate supervisor that he doesn't agree and doesn't feel comfortable being put in this situation. **(See Attachment 91)**

Conclusion Response:

The Ms. Aragon and Ms. Rijos receive from the Education Department of list of inmate names who have a high school diploma or G.E.D. On this list it also tell you what inmate don't have at least a G.E.D. This list is provided to each inmate work detail supervisors. The detail supervisors are responsible to review this list to ensure they enter the proper education level, which equates to ensuring the inmate is paid appropriately. An inmate with a G.E.D. can only receive grade 4 pay or maintenance pay. If the inmates primary language is Spanish then Ms. Rijos should of been able to translate the information clearly to the inmate. Ms. Rijos is Puerto-Rican and speaks it fluently or Ms. Aragon and Ms. Rijos should of asked a Spanish speaking employee to translate for them to ensure there were no confusion. The inmates working the glass breaking room receive grade 1 pay, not grade 4 pay. Why would the inmate request for an exemption for grade 4 pay when he would make more with grade three pay?

Listing of Actual/Apparent Violations: The list below is the violation of Law, Rule, or Regulation, Specific Danger to Public Health or Safety, Abuse of Authority at USP Atwater.

U.S. Department of Justice

Federal of Bureau Prisons

Atwater, CA 95301

DEC. 14, 2004

MEMORANDUM FOR: Phil Rodriguez (Safety Department)

FROM: A.J. Garcia (UNICOr Recycle Foreman)

SUBJECT: Inmate [redacted]

On DEC. 14, 2004 at approximately 2:00 p.m. I was approached by inmate [redacted] and he told me he didn't want to work in the glass breaking area in UNICOR on the rear dock. He went on to tell me that he didn't feel safe in there. I asked him why was it that he was bringing it to my attention. He continued to tell me that he never agreed to get blood drawn from him either to work in the glass room. He said that approximately 4 weeks ago he was requested to go to Health Services and get some blood drawn after he had gotten blood drawn a few weeks before that. While getting his blood drawn he states that he asked Ms. Martinez what it was for, and her response was that it was for UNICOR and it was because of the air. So he continued with getting his blood drawn. Now that a few weeks have passed and on this date he was requested to go see Mrs. Aragon in her office along with Mrs. Rijos as a witness. He stated to me that Mrs. Aragon told him that he would be working in the glass room. He asked her why if he didn't request to be put in that work area. Her response to him was, that since he didn't have a G.E.D. she would be able to take his Grade 3 pay grade status away and reduce it to a Grade 4 pay status with less money on his check. He tells me that he feels threatened by her statements of intent to reduce his pay if doesn't follow as she says. The inmate told me that he doesn't agree and doesn't feel comfortable being put in this situation. I am informing the Safety Department in U.S.P. Atwater of this situation on this date. If you have any further questions, you may contact me in UNICOR.

CC: Leroy Smith

1. Executive Order 12196 - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights.

2. OSHA 29 CFR 1960 - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights.

3. Program Statement 1600.08, Chapter 1, Page 4, Section g - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights under Executive Oder 12196, 29 CFR 1960, or for participating in the Bureau's Safety and Environmental Health Program.

4. Violation of Policy Program Statement 1210.24, Office of Internal Affairs, Page 4 Classification 3 - Unprofessional conduct (disorderly conduct.)

5. Violation of Policy Program Statement 3420.09, Standards of Employee Conduct, Page 9, Section (3) - An employee may not use physical violence, **threats** or **intimidation** towards fellow employees, inmate, or family members of employees or inmates,

Action Planned or Should be Taken:

Ms. Aragon and Ms. Rijos should receive disciplinary action for their unprofessional misconduct. Also, Ms. Aragon and Ms. Rijos for threatening and intimidating the inmate for voicing his opinion about his safety and health and for participating in the safety and environmental health program.

Allegation 8e Response:

Mr. Novicky, Ms. Keidel, Mr. V. Smith, Ms. Cantwell, Mr. Stahley, Mr. Luna, Mr. Booth and Mr. Schultz retaliated, harassed, intimidated, coerced, threatened, interfered, restrained, and demeaned me for the enforcement of the safety and environmental health program and for identifying and enforcing safety, environmental health, and environmental control measures associated with the Federal Prison Industries Computer Recycling Program and Glass Breaking Operation.

Findings Response:

I initially reviewed all relevant Material Safety Data Sheets and discovered the computer monitors contained 98 per cent lead and other hazardous metals to include, but not limited to arsenic, barium, cadmium, chromium, and mercury. I requested any previous analytical data from other UNICOR Computer Recycling Programs opened prior to USP Atwater from Mr. Stahley. I learned from Mr. Novicky through Mr. Stahley that no other hazardous risk assessments had been conducted, because there were no safety or health concerns associated with the Cathode Ray Tubes (CRT's). Mr. Novicky and Mr. Stahley refused to conduct any initial testing at USP Atwater, which I independently contracted for outside company to conduct the testing. After receiving the initial testing results, the implications locally was that our staff and inmates were being exposed to higher levels of lead, cadmium, barium and other dangerous metals than allowed for by Occupational Safety and Health Act (OSHA). By my notification of our staff and inmates being exposed to hazardous metals for ninety (90) days with a glass breaking booth already installed. The broader implications were that there were at least four similar glass breaking

operations throughout the Bureau that have been open for a number of years, which to date, have not conducted initial environmental health risk assessments. These other Institutions were breaking CRT's out in the open without a glass breaking booth or any type of proper ventilation. Also, the staff, inmates, and staff families were subjected to high concentrations above the OSHA permissible exposure limits for one (1) to eight (8) years.

This wasn't about a difference in policy interpretation or other disagreements. This was about Federal Prison Industries knowingly and wilfully disregarding OSHA and EPA compliance. This was obviously about Federal Prison Industries "business as usual" approach, but caught with their "hand in the cookie jar" mentality. This was also about production and profit. As we know, non-compliance with OSHA and EPA standards could result in citations and fines, expose the Bureau to future litigation, and further put the safety and health of staff, inmates, and staff families at risk. What follows is my roadmap to ensure the Executive staff and other management officials unprofessional and misconduct are revealed:

1. In December of 2000, I was physically assaulted by Lieutenant Weir. The Lieutenant struck me across the left shoulder and neck area with a broom handle, which lift welts and bruising on my body. Then he through additional items at me striking my entire body and tried to push me off the forklift. Formal written memorandums were filed with Mr. J. T. O'Brien, and Mr. Luna. No investigation was conducted nor reported to OIA. **2.** On June 6, 2002, Mr. Stahley stated the following: what the Fuck are you doing in my factory, why in the Fuck are you wearing ear muffs, I think your trying to scare my staff and inmates and that you need to get the Hell out of my factory, you need to get the Hell out of my factory two more times, I informed Mr. Luna, (Supervisor) and he stated there was nothing that he could do, that this was Mr. Stahley's problem and that he could not help me. **(See Attachments 92, & 92a) 3.** On June 6, 2002, Mr. Stahley then stated the following: you need to Shut up, I said shut the Hell up, I am not talking to you, I am talking to Mr. Luna, I am given you a direct order to never enter the factory again without strict supervision, didn't I tell you to shut the Hell up!
(See Attachments 93, 93a, & 93b) 4. On June 6, 2002, I spoke with Mr. Kapusta about being accused of falsifying an inmate injury report and that I have spoken with Mr. Luna about Mr. Stahley's abusive and threatening language. Mr. Kapusta stated the following I will speak with the Warden but for the mean time make sure you continue to document the conversations you have with Mr. Stahley and Mr. Luna. **(See Attachment 94) 5.** On June 28, 2002, I spoke with Mr. Kapusta about the air sampling results exceeding the OSHA limits, which we exposed our staff for three (3) months. I then informed Mr. Kapusta, that I notified Mr. Luna about the air sampling results, but Mr. Luna only wanted to address who gave me permission to temporally suspend the glass breaking booth. I also informed Mr. Kapusta, that Mr. Luna and Mr. Stahley told me not to speak with Mr. O'Brien about the air sampling results or else. Mr. Kapusta told me, you need to let Mr. O'Brien know about the air sampling results and how both of them threatened you. **(See Attachment 95, & 95a) 6.** On July 8, 2002, I informed Mr. Kapusta about a conversation I had with Mr. V. Smith pertaining to the glass breaking operation being temporally suspended. I then informed Mr. Kapusta, that Mr. V. Smith wants me to place inmates in respirators and put them back to work. Mr. Kapusta stated, Mr. Stahley just doesn't understand who runs this institution and that's Mr. O'Brien, not the Central Office. Mr. Kapusta then stated, he will inform Mr. O'Brien and make sure you document the conversation. **(See Attachments 96, & 96a) 7.** On July 10, 2002, Mr. Larry Novicky stated the following: innuendoes and statements he had heard surrounding the review of the glass breaking operation by the Safety Manager, the verbal transmittal of accusations and/or innuendoes of noncompliance of UNICOR's Atwater operation is unprofessional and is to cease immediately, we can not allow improperly documented or haste govern the operation of our UNICOR operations. **(See Attachment 23) 8.** On July 10, 2002 during a Central Office American Correctional

June 7, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Follow-up on Eye and Hearing Protection Conversation with Mr. Stahley and Mr. Luna**

On June 5, 2002, I was informed by Associated Warden, Luna, to conduct a follow-up in the UNICOR Factory to ensure staff and inmate workers were provided appropriate hearing protection and to ensure staff and inmate workers were wearing the hearing protection provided. The following is for your review:

On June 6, 2002, I entered the UNICOR Factory and applied my ear muffs and eye protection. I observed inmates at the glass breaking, production lines, food service and triage areas not complying with the hearing and eye protection requirements.

I also, observed staff working the floor not wearing hearing and eye protection.

I then informed staff, that they need to enforce and comply with the hearing and eye protection requirements.

I began to walk the production line when Associate Warden Stahley began yelling from behind and waving his arms to come and see him. I walked towards Mr. Stahley and he began to walk away. I continued to follow him, but Mr. Stahley continued to walk away towards the entrance/exit of the UNICOR Factory.

As I approached Mr. Stahley stated, "What the fuck are you doing in my factory."

He then asked, "Are you conducting a safety inspection?"

I informed Mr. Stahley, that I was conducting a follow-up per Associate Warden Luna's request to ensure hearing and eye protection were being issued and worn by staff and inmates.

Mr. Stahley then stated, "Why in the fuck are you wearing ear muffs."

I informed Mr. Stahley, that this is the protection level I purchased for Mr. Rodriguez and myself to wear in high noise areas (i.e., UNICOR Factory, Shooting Range etc.).

I also mentioned to Mr. Stahley, that this allowed us to hear staff and inmates at close or long distances without having us shout at each other.

Mr. Stahley then stated, "that I think your trying to scare my staff and inmates and that you need to get the hell out of my factory."

I informed Mr. Stahley, that I was not trying to scare anyone, but I am trying to get staff and inmates to comply with the hearing conservation program to protect all parties.

Mr. Stahley replied, that I don't care what you think you are doing, I am telling you that your starting to cause a riot in my factory and if your not conducting a safety inspection that you need to get the hell out of my factory.

I informed Mr. Stahley, that I think he maybe over reacting and that I would live and inform Mr. Luna of what I have seen and what has transpired between himself (Mr. Stahley) and I.

Mr. Stahley then stated, that he did not care about why I purchased this type of hearing protection or that he maybe over reacting, but if I was not inspecting the factory, that I needed to get the hell out.

I then informed Mr. Stahley, that I was going to leave, but I would like to inform you (Stahley) that I want you to stop the verbal abuse, harassment, and retaliation towards me.

Mr. Stahley replied, that he did not care what the hell I wanted and requested for me to leave his factory.

On June 6, 2002, In formed Associate Warden Luna of the current conversation I had with Mr. Stahley.

Mr. Luna stated, that there was nothing that he could do.

I informed Mr. Luna, that I was tired of being verbally abused (i.e., mother fucker, fuck, hell etc), harassed, and retaliated against by Mr. Stahley for the implementation and enforcement of the safety and health program.

I also informed Mr. Luna, that I want Mr. Stahley's verbal abuse, harassment and retaliation to stop.

I also asked Mr. Luna, if he would speak to Mr. Stahley and express my feelings about his (Stahley's) constant verbal abuse, harassment, and retaliation towards me. I also asked Mr. Luna, to inform Mr. Stahley that it needs to stop immediately.

Mr. Luna replied, that this was Mr. Stahley's problem and that he could not help me.

I informed Warden O'Brien of the conversation that took place with Mr. Stahley and Mr. Luna.

June 7, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Inmate Injury Investigation Report**
Conversation with Mr. Stahley and Mr. Luna

On June 6, 2002, Mr. Luna asked me to enter his office and when I entered the office I noticed Mr. Stahley seating on the right side facing Mr. Luna's desk.

Mr. Luna informed me, that Mr. Stahley and I (Mr. Luna) have some issues to discuss with you.

Mr. Stahley began to accuse me of falsifying the inmate accident report and that he had spoken with Phil Rodriguez, Safety Specialist about the injury.

Mr. Stahley also stated, that Mr. Rodriguez informed him that he had seen the work procedures and training information.

He further stated, that Mr. Rodriguez had mentioned that the safety department had missed placed the documentation previously provided.

Mr. Stahley informed Mr. Luna, that Warden O'Brien had instructed me (Mr. Smith) to make changes to the inmate accident report and that I (Mr. Smith) have refused to do so.

I then informed Mr. Luna, that I had spoken with Mr. Rodriguez about the alleged conversation with Mr. Stahley.

I also informed Mr. Luna, that Mr. Rodriguez stated that he had not spoken to Mr. Stahley about any computer work procedures nor inmate training. Mr. Rodriguez did say that Mr. Stahley handed him the inmate accident report and that Mr. Stahley wanted to inform me (Mr. Smith) of the changes the Warden had requested and that he would not sign the report until the changes had been made.

Mr. Stahley then turned towards me (Mr. Smith) and stated, "you need to shut up."

I replied, why do I need to shut up, wasn't I asked to participate in this conversation so UNICOR issues can be worked out.

Mr. Stahley then stated, "I said shut the hell up, I am not talking to you, I am talking to Mr. Luna."

Attachment #92.

I then complied with Mr. Stahley's request.

Mr. Stahley then informed Mr. Luna, that I had entered the UNICOR Factory with ear muffs and eye protection and that when I left the Factory the inmates were very upset with my display and that he felt the inmate may riot.

Mr. Stahley asked Mr. Luna to give me a direct order to never enter the factory again without strict supervision?

I informed Mr. Luna, that I am required to make periodic safety rounds and conduct monthly inspections without any restraint or coercion and that Warden O'Brien can only authorize such a request.

Mr. Stahley then stated, "didn't I tell you to shut the hell up."

I then again complied with Mr. Stahley's request.

Mr. Luna then informed Mr. Stahley, that Leroy is correct that I don't think I can request him stay out of the UNICOR Factory.

Mr. Stahley then stated, that something needs to happen before we have problems with inmates in the factory.

I then informed Mr. Luna, that the inmates are only upset because of the lack of response by UNICOR staff responding to the inmate that was seriously injured on the production line.

I also informed Mr. Luna, that the inmates are becoming very restless because the proper protective equipment has not been purchased nor provided to them, which inmates are continuing to get injured daily.

I further informed Mr. Luna, that inmates are also upset when they (Inmates) ask to replace damaged personal protective equipment and they (Inmates) are given the riot act, ignored, or just not provided replacement equipment at all.

Mr. Stahley then stated, "are you accusing me of not properly protecting the inmate workers."

I replied, no.

I then stated, that what I am saying is that all personal protective equipment should of been purchased prior to the UNICOR Factory going on line and personal protective equipment should be provided to inmates without feeling any reprisal for wanting to protect themselves.

I also stated, with the proper personal protective equipment in place this would of helped in preventing the most serious inmate injuries, which is causing the inmate workers to be upset.

Mr. Stahley then stated, that I am leaving because I can see this is going no where.

Attachment #93a

I then stated to Mr. Luna, that this is a prime example of what I have been trying to explain to him (Mr. Luna) about Mr. Stahley being verbally abusive, the constant harassment, the constant retaliation and the lack of support to implement and enforce the safety and health program. I also stated to Mr. Luna, that I have reported Mr. Stahley's unprofessional conduct and actions towards me to Warden O'Brien and himself (Mr. Luna) on several occasions, but it doesn't stop.

I then asked Mr. Luna, would this harassment and retaliation continue if I wasn't a white male?

Mr. Luna just stood there and shook his head.

I asked Mr. Luna, if there was anything that I did or anything that I should have done differently to prevent this hostile work environment?

Mr. Luna replied, "no."

I then asked Mr. Luna, why did Mr. Stahley become so angry, if both of you wanted to talk me?

Mr. Luna replied, that he wanted me to be present because he believes that with both of us present maybe things could be worked out and that he could hear both sides at one time.

I informed Mr. Luna, that I would like to speak with the Warden again about Mr. Stahley's unprofessional behavior and that I hope this time something will be done about.

Mr. Luna replied, "so do I."

I also mentioned to Mr. Luna, that I have worked very hard to be in the position that I am currently in and I am not willing to through away any future promotion opportunities because of Mr. Stahley.

I also mentioned, why would I risk making the Warden upset knowing my wife is applying for the education technicians position.

Mr. Luna replied, "I know."

I informed Warden O'Brien of the conversation that took place with Mr. Stahley and Mr. Luna.

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

June 4, 2002

MEMORANDUM RICHARD T. LUNA, ASSOCIATE WARDEN OPERATIONS

FROM: **Leroy A. Smith Jr., Safety Manager**

SUBJECT: Inmate Accident Investigation

On June 4, 2002, at approximately 9:45 a.m., I spoke with Mr. Stahley, Associate Warden I&E concerning the UNICOR Factory inmate injury that occurred on May 20, 2002. Mr. Stahley indicated that he did not agree with the findings of the report and the required safety measures. Mr. Stahley further related that he would not sign the accident report.

If I can provide any further assistance, please do not hesitate to let me know.

cc: Warden

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

June 3, 2002

MEMORANDUM FOR All Concerned

FROM: P. Rodriguez, Safety

SUBJECT: **For Your Information**

On May 31, 2002 at approximately 8:30a.m., I was approached by Mr. T. Stahley, AW(I&E), which he informed me that Warden O'Brien and himself disagree with the findings of the report. Mr. Stahley also informed that Warden O'Brien wants the report to be re-written. Mr. Stahley then informed me that he would not sign the accident report until Mr. Smith makes the appropriate changes.

cc: AW(O)
Safety Manager
Safety File

June 6, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: L. A. Smith, Safety Manager

SUBJECT: Conversation with Mr. Gregory Kapusta AW©

On June 6, 2002, at approximately 3:30 p.m., I asked Mr. Kapusta, if I may be able to speak with him about Mr. Stahley's continued retaliation, and verbal abuse for enforcing the safety and health program, he even accused me of falsifying the inmate injury report and he didn't like me enforcing the OSHA Hearing Protection guidelines for high noise areas.

Mr. Kapusta stated, come on in and set down Leroy, you look like your going to have a heart attack. Mr. Kapusta then asked, did you speak with Mr. Luna?

I replied to Mr. Kapusta, that I did speak with Mr. Luna about Mr. Stahley's abusive and threatening language while I was walking through the Factory, per Mr. Luna's request. I then informed Mr. Kapusta, that Mr. Luna, Mr. Stahley, and I discussed issues about the inmate injury report, which he accused me of falsifying and requested that I need to change the report, per Warden O'Brien.

Mr. Kapusta then asked, what did Mr. Luna have to say?

I informed Mr. Kapusta, that Mr. Luna told me that there was nothing he could do, because it's Mr. Stahley's problem and that he could not help me.

Mr Kapusta then asked, did you speak with the Warden yet?

I replied, Yes, he said he will tell him to stop before he gets his ass kicked.

Mr. Kapusta then asked, are you documenting these conversations like I told you too?

I replied, Yes, but I think it's a waist of time when Warden O'Brien will not take any action towards Mr. Stahley nor Mr. Luna, the documents are worthless.

Mr. Kapusta then stated, I will speak to the Warden, but for the mean time make sure you continue to document the conversation you have with Mr. Stahley and Mr. Luna.

I then informed Mr. Kapusta, that I just want the retaliation and harassment from Mr. Stahley and Mr. Luna to stop.

Mr. Kapusta replied, I understand Leroy.

June 28, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: L. A. Smith, Safety Manager

SUBJECT: Conversation with Mr. Gregory Kapusta AW©

On June 28, 2002, at approximately 10:00 a.m., I informed Mr. Kapusta, that I temporarily suspended the glass breaking operation in UNICOR, because of personal air sampling results show were above the OSHA Permissible Exposure Limits for Lead and Cadmium.

Mr. Kapusta asked, did you speak with Mr. Stahley about the exposure of staff and inmates over the last three months?

I informed Mr. Kapusta, that I told Mr. Stahley that he had exposed staff and inmates working the glass breaking operation for over three months, based off Mr. Larry Novicky's word that the CRT's were safe to work with.

Mr. Kapusta then asked, what should we of done?

I informed Mr. Kapusta, that the staff and inmates should of at least been provided respirators to protect them from inhaling the hazardous metals, which I told Stahley to purchase.

Mr. Kapusta then asked, have you told Mr. Luna (My Supervisor) about the test results?

I replied, Yes, I informed Mr. Luna, but all he wanted to know is who gave me permission to tell Mr. Stahley to temporally suspend his glass breaking operation! I then informed Mr. Kapusta, that Mr. Luna then called Mr. Stahley to have him meet us in Mr. Luna's office.

Mr. Kapusta then asked, how did the conversation between you, Mr. Luna, and Mr. Stahley Stahley go?

I informed Mr. Kapusta, that Mr. Luna and Mr. Stahley instructed me not to speak to Warden O'Brien about the personal air sampling results. I then informed Mr. Kapusta, that I told Mr. Luna and Mr. Stahley that I am required to inform the Warden and the Regional Office.

Mr. Kapusta then asked, what did Mr. Luna and Mr. Stahley have to say to that?

I informed Mr. Kapusta, that Mr. Luna and Mr. Stahley informed me that were giving you a direct order not to mention anything to Warden O'Brien or else.

Mr. Kapusta then asked, what did Mr. Luna and Mr. Stahley mean by or else.

I informed Mr. Kapusta, that Mr. Luna and Mr. Stahley threatened to write me up for insubordination if I mentioned anything to Warden O'Brien and then Mr. Luna stated, someone needs to kick your arrogant ass.

Mr. Kapusta then stated, you need to let Warden O'Brien know about the air test results and about how both of them threatened you.

I informed Mr. Kapusta, that I will inform Warden O'Brien about everything, because I am tired of their retaliation and harassment towards me for doing my job.

July 08, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Mr. Gregory Kapusta AW©**

On July 8, 2002, at approximately 1:00 p.m., I spoke with Mr. Kapusta about the phone call I received from Mr. Stahley and Mr. Varney Smith, UNICOR Central Office. I informed Mr. Kapusta, that Mr. Stahley wanted me to speak with Mr. Varney Smith about the glass breaking operation being temporally suspended.

Mr. Kapusta asked, why would Mr. Stahley have this Mr. Varney Smith call you directly instead of calling the Wardens Office first?

I informed Mr. Kapusta, that Mr. Stahley always goes around the Warden. I then informed Mr. Kapusta, that I receive phone calls from the Central Office all the time about the glass breaking operation, which I inform them that I can't pass on any information without Warden O'Brien's okay.

Mr. Kapusta asked, what did Mr. Varney Smith exactly want?

I informed Mr. Kapusta, that I told Mr. Varney Smith that we have taken some samples and were taking some precautionary measures to ensure the Safety and Health of staff. I then informed Kapusta, that Mr. Varney Smith asked when the glass breaking operation would be back up and operating.

Mr. Kapusta then stated, I hope you told him that Warden O'Brien will make that decision.

I informed Mr. Kapusta, that Mr. Varney Smith that I couldn't give him an exact time. I then informed Mr. Kapusta, that Mr. Varney Smith was very evasive by asking questions he already had answers for and then he admitted that he knew about the Cadmium and Lead concerns.

Mr. Kapusta then asked, was there anything else Mr. Varney Smith had to say?

I informed Mr. Kapusta, that Mr. Varney Smith wanted me to put the inmates in respirators and re-open the glass breaking operation, which there more to the OSHA guidelines that needs to be put in place before we can even think of re-opening the glass breaking operation.

Mr. Kapusta then stated, I will speak with Warden O'Brien.

I then informed Mr. Kapusta, that I will not do anything about the glass breaking operation until I hear from Warden O'Brien. I also told Mr. Kapusta, that Mr. Varney was being intimidating by telling me that I'm causing more issues and delays then necessary.

Mr. Kapusta then asked, what did Mr. Stahley have to say about all this.

I informed Mr. Kapusta, that Mr. Stahley acted like he was just the messenger boy. I then informed Mr. Kapusta, that Mr. Stahley called back and asked what Mr. Varney Smith and I had spoken about.

Mr. Kapusta asked, what did you tell Mr. Stahley?

I informed Mr. Kapusta, that I told Mr. Stahley that Mr. Varney Smith wanted to put our inmates in respirators and put them back to work, which Mr. Stahley asked what did I tell Mr. Varney Smith? I then informed Mr. Kapusta, that I told Mr. Stahley we have additional OSHA guidelines to implement and until then the glass breaking operation was to remain temporally suspended.

Mr. Kapusta then asked, what did Mr. Stahley have to say when you told him the glass breaking operation was going to remain closed.

I informed Mr. Kapusta, that Mr. Stahley was very intimidating by telling me are you sure about this, which I told him yes..

Mr. Kapusta then stated, you keep taking care of the Warden's business and you'll be fine.

I finally informed Mr. Kapusta, that Mr. Stahley wants Mr. Phillip Rodriguez, Safety Specialist to develop a plan of action for Mr. Larry Novicky, but I told Mr. Rodriguez to hold off.

Mr. Kapusta then stated, nobody going to write anything for Mr. Larry Novicky or any Central Office staff until Warden O'Brien approves it first.

I informed Mr. Kapusta, that I understood that and that maybe now everyone can see were the information coming from that is being sent to the Central Office.

Mr. Kapusta then stated, Mr. Stahley just doesn't get it who runs this institution and that's Warden O'Brien not the Cental Office. Mr. Kapusta also stated, I will inform Warden O'Brien and make sure you document the conversations.

I informed Mr. Kapusta, that I already began documenting the conversations for my personal file.

Association (ACA) walk through of UNICOR, Ms. Victoria Pagan, Camp Administrator observe Mr. Stahley arguing with me about the current safety and environmental health concerns associate with the glass breaking operation. Mr. Stahley stated, I don't give a Dam what you think, UNICOR in DC. will be handling everything and it's their responsibility now, Ms. Pagan called me over to speak with her when Mr. Stahley grabbed my arm and pulled me back. **(See Attachments 97, 97a, 97b, & 97c)**

9. On July 10, 2002, I informed Mr. Kapusta that Mr. Stahley grabbed the tablet out of Ms. Graciano's hands during the ACA walk through. I then informed Mr. Kapusta that Ms. Pagan requested to speak with me when Mr. Stahley grabbed my arm and pulled me back towards him. Mr. Kapusta asked if Mr. Luna requested a memorandum and I replied, No. No investigation conducted. **(See Attachment 98)**

10. On July 10, 2002, I made an official report to Mr. Luna, (Supervisor) about Mr. Stahley's verbal abuse and threats towards me, which he failed to report this to Mr. Schultz. No investigation conducted by the institution nor reported to OIA. **(See Attachment 99) 11.** On July 11, 2002, I informed Mr. Kapusta about Mr. Novicky's memorandum to Mr. Stahley. Mr. Kapusta read the memorandum, which said verbal transmittal of accusations and/or innuendos of noncompliance of UNICOR's Atwater operation is unprofessional and is to cease immediately. Mr. Kapusta then stated, I think Mr. Novicky should of ensured measures were in place to protect staff and inmates from the harmful metals, which he wouldn't be worried about someone finding out he screwed up. **(See Attachment 100) 12.** On July 15, 2002, Mr. O'Brien stated the following: I heard that you may need a lawyer, I was informed you needed a lawyer and I wanted to make sure you are okay, you know who you work for, you need to watch what information is being given to the Union, people sometimes react in an inappropriate manner when they have been embarrassed, but that does not excuse them from their inappropriate conduct! **(See Attachments 101, 101a, & 101b) 13.** On August 8, 2002, Mr. Luna stated the following: who do you think you are and who authorized you take photos of any area in the institution, you have poor communication skills and that he was going to make an official negative log entry in my communication element, I don't give a shit what the Warden and you discussed, because the Warden is not your boss I am, you need to shut the fuck up because this is going to be an A-to-B conversation only, you have had poor communication skills for almost two years and that it is time for me to address this issue formally, I don't care nor do I give a shit, what you discuss with the Warden, it won't prevent me from giving you the negative log entry, I am giving you a direct order not to conduct any safety inspections, conduct any safety walk through's, write/issue any memos, nor conduct/address any safety concerns without informing me first, you are not to go anywhere in the institution nor conduct any safety related tasks without notifying me first! **(See Attachments 102, 102a, & 102b) 14.** On August 8, 2002, I spoke with Mr. Kapusta about Mr. Luna and Mr. Stahley being upset with me taking pictures of life safety equipment. Mr. Kapusta asked, doesn't the safety department handle life safety issue? I replied, Yes. Mr. Kapusta stated, that he will speak with Mr. O'Brien. Mr. Kapusta then stated, you need to go to your office and relax. Mr. Kapusta also stated, Mr. Luna and Mr. Stahley hate you because what you are telling them your always right and they know you know policy which frustrates them. **(See Attachment 103) 15.** On August 8, 2002, I submitted a formal written memorandum to Mr. J.T. O'Brien, Chief Executive Officer, about Mr. Stahley's and Mr. Luna's Executive staff misconduct and Hostile Work Environment conditions towards me. No investigation conducted. **(See Attachments 104, 104a, & 104b) 16.** On August 27, 2002, Mr. Tussey stated the following: this was going to be his first Official Ass Chewing, Mr. Novicky and others who read this memorandum were pretty upset, the memorandum may have Union and litigation issues, you nor your Executive staff have authority to dictate policy or procedures to the field!**(See Attachments 18, 18a, 18b, & 18c) 17.** On October 24, 2002, Mr. Luna then stated the following: You don't have the authority to direct a GS-15 or any other department to provide you an assurance memo without notifying me first, I see you sent this memo to the Warden!, I'm Fucking telling you that you are not to inform Warden Schultz of anything without going through me first and as I ordered you not to inform Warden O'Brien which you continued to do, you will not address any safety issues with

July 10, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: L. A. Smith, Safety Manager

SUBJECT: Conversation with Mr. Stahley

On July 10, 2002, at approximately 2:00 p.m., I was assisting with the ACA walk through in UNICOR Factory. Mr. Jesse Gonzales, Executive Assistant requested me to see if Mr. Stahley was in his office and to ask him to please accompany us through the factory.

I went to Mr. Stahley's office and when I arrived Mr. Stahley's office door was closed and he was on the phone. Mr. Stahley observed me standing outside his door and waved for me to come in. It appeared that Mr. Stahley was talking to another staff member from another institution about our current environmental issues. Mr. Stahley stated, "that we had tested our filters to the exhaust system, which bad shit like lead, cadmium, and barium was found." Mr. Stahley asked the staff member on the phone, if they were aware of this information and how were they currently handling their materials. Mr. Stahley became quiet and then stated, "well we won't go there, but we will be handling our filters as hazardous waste." Mr. Stahley then asked this staff member what type of personal protective equipment were they providing their staff and inmates. Mr. Stahley then stated, "you provide only paper dust masks." Mr. Stahley then mentioned, that our UNICOR glass breaking operation is temporally shut down. Mr. Stahley then stated, that he would probably need to send the institution eight trailer loads of computer monitors. Mr. Stahley then stated, that he had someone in his office and he couldn't talk. Mr. Stahley then proceeded to get off the phone.

I asked Mr. Stahley, which institution was he discussing our current glass breaking operation concerns with?

Mr. Stahley replied, that he could not tell me and then stated it is **top secret.**

I reminded Mr. Stahley, that I still needed all the institution names, number of inmates on the crews, and the year their glass breaking operation came on line.

Mr. Stahley replied "I know you need this information, but I can't provide it to you."

I informed Mr. Stahley without this information, I can not finalize the Executive Memo for the Warden's review and proper notification to other institutions with similar glass breaking operations won't be made.

Mr. Stahley replied, that this is not his current concern. He also stated, that UNICOR in D.C. is currently looking into the Environmental concerns and that he has been instructed to not provide any information.

I asked Mr. Stahley why does it seem to be so difficult to get this information from UNICOR in D.C?

Mr. Stahley began to smile and stated, that UNICOR in D.C. will not provide the information to him and that it is **top secret** and they are currently working on the issues.

I informed Mr. Stahley, that Warden O'Brien requested that I retrieve this information from you (Stahley), which I will add the information to the final report.

Again, Mr. Stahley began to smile and stated, that the information was **top secret.**

Mr. Stahley then stated, that he has been reading the EPA 40 CFR.

I informed Mr. Stahley, that there is a lot of information to disseminate all at one time and that the 40 CFR pertains to hazardous waste only.

Mr. Stahley stated, that he understood that and that there is other things that we are not currently doing.

I then asked Mr. Stahley, when he wanted me to schedule swab testing and monitoring with OCCU-Tech Inc?

Mr. Stahley replied, that the money had not been approved by UNICOR to have the testing done yet.

I then stated, that I heard the money for the testing to be conducted had been approved.

Mr. Stahley replied, "who told you that!"

I then stated, that Varney Smith from UNICOR, the person you had call me. (Monday, July 8, 2002)

Mr. Stahley then stated, that he requested UNCIOR in D.C. to contract an outside environmental company to evaluate and develop the programs necessary for his factory.

I informed Mr. Stahley, that OCCU-Tec Inc. is an outside Environmental Company that we are currently using.

Mr. Stahley then replied, "that I do not care!" That's who you recommended and "that I want them to provide someone else to conduct all the tests and for them to be the one's who pays for whatever needs to be done!"

Mr. Stahley also stated, "that I will no longer be needing you, so your out of this!"

I asked Mr. Stahley what he meant by that?

Mr. Stahley replied, "that you interpret it how you see it!"

I mentioned to Mr. Stahley, that this will bring more delays and that I would still need to be involved with the whole process.

Mr. Stahley replied, that actually this will remove you and determine if what you have currently required us to do is accurate.

I then informed Mr. Stahley, that Mr. Jesse Gonzales, Executive Assistant requested for him to be present during the ACA walk through.

During the walk through Mr. Stahley was becoming very argumentative with Jeri Christian, ACA Reviewer.

At the end of the UNCIOR walk through Mr. Stahley, aggressively asked Ms. Graciano, EDM, what she was writing down. Ms. Graciano turned to show Mr. Stahley, when he grabbed the paper tablet out her hands.

As we waited to exit the UNCIOR Factory Mr. Stahley stated to me that you should smile and be happy.

I asked Mr. Stahley what he meant by that?

Mr. Stahley replied, "you would not have to worry about his (Mr. Stahley) operation any longer!"

I told to Mr. Stahley, that we need not only comply with hazardous waste requirements, but also the OSHA guidelines for lead and cadmium personal protective requirements.

Mr. Stahley then asked, what did you say because he could not hear me.

Mr. Stahley and I then began to talk to each other at a close distances because of the noise in UNICOR at the time.

Mr. Stahley then replied, that he really didn't give a dam what you think, because UNICOR in D.C. will be handling everything and it is their responsibility now!

Mr. Stahley then stated, that he would of expected that I would of been happy to have the monkey taken of my back.

I then replied, that I take the safety and health of all staff and inmates very seriously and I don't shake my responsibility to them or the Bureau.

Ms. Pagan, Camp Administrator, called me over to speak with her.

Mr. Stahley then grabbed my arm area and pulled me back, as if he was not done talking to me.

I then mentioned to Mr. Stahley, that we all have an obligation to gather the facts and protect the staff and inmates from harm and to properly notify other institutions of the same possibility of exposure to their staff and inmates.

Mr. Stahley then replied, "you need to remove yourself from all these concerns because UNICOR is taking care of everything now!"

I then mentioned to Mr. Stahley, that a OSHA inspector once mentioned to me, that when someone becomes aware that they are knowingly and willfully not complying with a regulatory guideline, then they are knowingly and willfully violating the law, which is criminal intent.

Mr. Stahley replied, "that UNICOR in D.C. will be responsible not him!"

I then asked Mr. Stahley if he informed UNICOR in D.C. that Warden O'Brien was requesting for this information to be provided.

Mr. Stahley replied, "yes."

I informed Mr. Luna and Warden O'Brien of the conversation with Mr. Stahley.

July 10, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Mr. Gregory Kapusta AW©**

On July 10, 2002, at approximately 3:45 p.m., I asked Mr. Kapusta, if I may be able to speak with about Mr. Stahley.

Mr. Kapusta replied, lets go for a walk and talk. Mr. Kapusta then asked, what has Mr. Stahley done now?

I informed Mr. Kapusta, that Mr. Stahley became very upset during the ACA walkthrough of the UNICOR Factory, he grabbed the tablet forcefully out of Ms. Graciano hands to look at what she was writing down as deficiencies.

Mr. Kapusta asked, did anyone say anything to Mr. Stahley?

I replied, Yes, Ms. Pagan did. I then informed him that I asked Mr. Stahley about the names of the institutions currently operating a glass breaking operation, per Warden O'Brien. I also informed Mr. Kapusta, that I tried to speak with Mr. Stahley about current OSHA and EPA guidelines needing to be in place, which Mr. Stahley replied, I don't give a dam.

Mr. Kapusta then asked, have spoken with Mr. Luna?

I informed Mr. Kapusta, that there was more. I then informed Mr. Kapusta, that Ms. Pagan called me over to talk to her and when I began to walk away Mr. Stahley grabbed my arm and pulled me back towards him in an aggressive manner.

Mr. Kapusta then stated, you need to let Mr. Luna know what happened.

I informed Mr. Kapusta, that I went to Mr. Luna's office to speak with him about the conversation I had with Mr. Stahley and when I arrived Mr. Stahley was already there speaking with him, which Mr. Stahley left. I also informed Mr. Kapusta, that Mr. Luna informed me that Mr. Stahley alleges that I became argumentative with him and I pointed my finger in his face.

Mr. Kapusta asked, did Mr. Luna ask you to write a memorandum on the incident?

I replied, No, Mr. Luna told me Mr. Stahley says he has proof on the UNCIOR cameras and that Mr. Stahley reviewed it himself.

Mr. Kapusta then stated, No one reviews any cameras without Warden O'Brien's permission first and Warden O'Brien not here and since I'm Acting Warden I didn't give him permission nor would I.

I informed Mr. Kapusta, that I am only telling you what Mr. Luna told me.

Mr. Kapusta then stated, you need to document what happened and I will be speaking with Warden O'Brien and I'll tell him what occurred between you and Mr. Stahley. Mr. Kapusta also stated, I will even tell Warden O'Brien that Mr. Luna did nothing to support you.

I replied, thank you, I greatly appreciate your help. I then informed Mr. Kapusta, that I'm tired of being retaliated against by Mr. Stahley and Mr. Luna for doing my job, it's like they enjoy tag teaming together against me.

Mr. Kapusta then stated, you need to keep taking care of the Warden's business.

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

July 10, 2002

MEMORANDUM TO RICHARD T. LUNA, ASSOCIATE WARDEN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Verbal Abuse and Threats by Mr. Stahley**

I am officially reporting to you of the continued verbal abuse and threats that we spoke about earlier in the day. I spoke with you on several occasions about Mr. Stahley's unprofessional behavior towards me. The constant verbal abuse, profane language, retaliation, and harassment needs to stop. As we previously discussed Mr. Stahley has called me "mother fucker", told me to "shut the hell up", "didn't I tell you to shut up", "you need to get the hell out of my factory", and more.

The other issue is Mr. Stahley abuse of authority by allowing the glass breaking operation to remain open when I temporally suspended the operation because of safety and environmental concerns. Mr. Stahley constantly trying to discrediting me personally and professionally to ensure his staff and inmates don't take their safety and health seriously, which we both know of the extreme health concern with the hazardous medals in the computer monitors.

I have asked you and Warden O'Brien to intervene and demand Mr. Stahley to stop causing a hostile work environment, which seems request hasn't been taken seriously. This is all related towards me enforcing the Safety Program and enforcing OSHA Guidelines that affect the glass breaking operation.

I ask that you speak with Mr. Stahley and tell him that his abusive/profane language, retaliation, harassment and coercive misconduct will not be excepted by me anymore.

If there are any questions, please do not hesitate to let me know.

July 11, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Mr. Gregory Kapusta AW©**

On July 11, 2002, at approximately 3:45 p.m., I spoke with Mr. Kapusta about a e-mail Mr. Matthew Korbelak, Industrial Hygienist Central Officer faxed me, which was damaging to me personally and professionally. I then informed Mr. Kapusta, that this document was being provided from UNICOR to the Health Services Division.

Mr. Kapusta asked, what are you talking about, take a deep breath and relax? Mr. Kapusta then asked, let me see the e-mail? Mr. Kapusta then stated, what does Mr. Novicky mean by false innuendoes and statements about the glass breaking operation by you.

I asked Mr. Kapusta, to read the last sentence of the first paragraph because it gets better.

Mr. Kapusta stated, verbal transmittal of accusations and/or innuendoes of noncompliance of UNICOR's Atwater operation is unprofessional and is to cease immediately. Mr. Kapusta then stated, I think Mr. Novicky should of ensured measures were in place to protect staff and inmates from the harmful metals, which he wouldn't be worried about someone finding out he screwed up.

I informed Mr. Kapusta, that these statements were intimidating, coercive, and damaging professionally.

Mr. Kapusta asked, did you tell Mr. Richard Luna about the e-mail?

I informed Mr. Kapusta, that I told Mr. Luna about the contents of the e-mail, but Mr. Luna acted like he didn't really care. I then informed Mr. Kapusta, that I even told Mr. Luna that Mr. Novicky's e-mail was retaliatory, intimidating, and coercive, towards me for identifying that UNICOR's Computer Recycling Programs Bureau-Wide are not in compliance with OSHA Guidelines.

Mr. Kapusta then stated, I will speak with Warden O'Brien and let him know about the e-mail between Mr. Novicky and Mr. Stahley.

I then informed Mr. Kapusta, that I will document our conversation and I will be writing a formal memorandum to Mr. Luna.

Mr. Kapusta then stated, I think that's a wise choice.

July 15, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Warden O'Brien, Associate Warden Luna and Associate Warden Stahley**

On July 15, 2002, I was informed by Ms. McKay, Wardens Secretary, that I needed to report to the Warden's office. When I arrived, Mr. Luna and Mr. Stahley were already present.

Mr. O'Brien informed me, that he had heard that I may need a lawyer.

I asked Mr. O'Brien, who would make a false statement like that.

Mr. O'Brien stated, that he was informed of this and that he wanted to make sure I was okay.

I informed Mr. O'Brien, that I had not mentioned to anyone that I was in need of a lawyer, but someone (Mr. Stahley) in the office had mentioned that to Phil Rodriguez, Safety Specialist and I.

I also informed Mr. O'Brien, that the individual (Mr. Stahley) stated, that he had spoken to his wife and father and requested them to look into his liability insurance policy, which he (Stahley) stated he was covered for one million dollars.

I also informed Mr. O'Brien, that I had mentioned this conversation with another person (Mr. Luna)in this office.

Mr. O'Brien then asked me, you do know who you work for?

I replied yes, I work for you sir.

I then asked, if my loyalty was being questioned in anyway?

Mr. O'Brien replied no, but there seems to be a lot of information being passed around.

I informed Mr. O'Brien, that I had not spoken to anyone, but I believed that someone (Mr. Stahley) in this office had and if anyones loyalty should be questioned it should be this person.

Mr. O'Brien then asked, what are you talking about?

I replied, that there is someone (Mr. Stahley) who has been speaking out of pocket and I have been a direct target of that discussion.

Mr. O'Brien then asked, do you have proof?

I replied yes, I then provided Mr. O'Brien with a memo from Mr. Larry Novicky, UNICOR Central Office to Mr. Stahley.

I informed Mr. O'Brien, that I did not solicit a copy of this memo.

I informed him, that this memorandum was being circulated through the Central Office.

Mr. O'Brien reviewed the memo and then stated, "Larry Novicky is concerned with innuendos and statements mentioned by Mr. Smith."

Mr. O'Brien then stated, "someone would has spoken out of turn to even make a statement like this."

Mr. O'Brien also stated, "I can not believe that even if he (Mr. Novicky) believed half of what he wrote, he would not of put his personal feelings on such a formal document."

Mr. Stahley stated, "that he had seen the memo, but he had not mentioned anything to Mr. Novicky, which would cause him to speak out of turn about the institution nor Mr. Smith."

Mr. Stahley also stated, "that he was upset with Mr. Novicky's memo because it implied that he was talking out of pocket about our current institution issues and Mr. Smith."

Mr. O'Brien then asked me, if I have taken this memo personally?

I replied, that I had not taken anything personally, but apparently someone in this office (Mr. Stahley) and outside this office (Mr. Novicky) has made it personal.

Mr. O'Brien then asked, Mr. Stahley if he had any issues or problems?

Mr. Stahley replied, no.

Mr. O'Brien then asked, if I had any issues or problems?

I replied, that I had no issues as long as no one else had any issues or problems.

Mr. O'Brien then informed me, that I need to watch what information is being given to the UNION.

Mr. O'Brien also asked, that all requests from the UNION for information must be in writing and sent to him.

I informed Mr. O'Brien that Mr. Rodriguez, Safety Specialist has access to all current Institution and UNICOR issues and that was why I originally requested the Safety Specialist position be a non-bargaining.

Mr. O'Brien replied, that he understood that, but to ensure that I do not provide anything willingly.

I asked Mr. O'Brien, if anyone had implied that I have provided any information to the Union without the Executive staff knowing.

Mr. O'Brien replied, no, that the Union found out that UNICOR (USP Atwater) was going to send computer monitors to Texarkana, and they accused us of sending our problems to another institution.

Mr. Luna stated, that anyone could of provided that information to the Union, especially UNICOR staff that are currently having other issues.

Mr. O'Brien agreed.

Mr. O'Brien again asked, if I had any issues or problems?

I replied, that I had none to speak of unless you mean that I was falsely accused of being argumentative and threatening to an Associate Warden (Mr. Stahley) in this office.

I informed Mr. O'Brien, that I had not conducted myself in a unprofessional manner.

I also informed Mr. O'Brien, that I was told that my actions could be viewed off the UNICOR cameras and that staff were present to support his claim.

I then informed Mr. O'Brien, that I would like for him to ask any one of the staff that were present if they observed me being argumentative or threatening in any way and if so I would respect their view.

I also asked Mr. O'Brien to review the footage on the UNICOR cameras to see how argumentative or threatening I was to this person (Mr. Stahley).

Mr. O'Brien then stated, again do you have any issues or concerns.

I replied, no.

Mr. O'Brien then asked the Associate Wardens if they had any issues or concerns.

They both replied, no.

Mr. O'Brien then stated, "People sometimes react in an inappropriate manner when they have been embarrassed, but that does not excuse them from their inappropriate conduct."

August 8, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Mr. Luna, AW(O)**

On August 8, 2002, Mr. Luna asked me to enter his office. When I entered Mr. Luna stated, that I see you have your camera.

I replied, yes sir. Mr. Luna then stated, that he has been dealing with an irate Associate Warden (Mr. Stahley), because I was taking photos of his UNICOR Warehouse operation.

I informed Mr. Luna, that I was not taking photos only of the UNICOR Warehouse, but also the garage fire pumps and institution warehouse fire pumps, because of continued safety deficiencies (6months to 1year).

I also informed Mr. Luna, that I had UNICOR staff with me and informed them of the safety deficiencies and provide them ways to correct their deficiencies.

Mr. Luna stated, "who do you think you are and who authorized you to take photos of any area in the institution!"

I replied, that I am confused and unclear to why he was displaying hostility towards me.

I also stated, that I was going to review the safety deficiency photos with him, just like I have in the past.

I then stated, that the Annual Fire Marshal Inspection will be scheduled within the next two weeks and that we will fail the fire marshal inspection with the current ongoing life safety and fire hazard violations.

Mr. Luna replied, what fire marshal inspection, is it required by policy.

I informed Mr. Luna, that I had made him aware of the annual mandatory fire marshal inspection on several occasions and that Bureau Policy and ACA require this inspection to be conducted annually.

Mr. Luna replied, this is the first time he had heard of this type of inspection, because when he was at Allenwood they never conducted a annual fire marshal inspection that he was aware of.

Mr. Luna then informed me, that I have poor communication skills and that he was going to make an official negative log entry in my communication element.

Mr. Luna also informed me, that my communication skills have been poor for almost two years, and they continue to get worse and that he should of disciplined me previously.

I then informed Mr. Luna, that Warden O'Brien and I had just talked about me using the camera, which he didn't see anything wrong with it because it's part of my job.

I also informed Mr. Luna, that Warden O'Brien did mention that some people may take offense of me taking photos, because of the recent UNICOR issues (CRT's), but that's because they where embarrassed and that in the future at least let you (Mr. Luna) know.

Mr. Luna informed me, that he did not give a shit what the Warden and I discussed, because the Warden is not my boss he is!

I then informed Mr. Luna, that according to Program Statement 1600.08, the Safety Manager does report directly to the Warden and disseminates information through the appropriate Associate Warden.

Mr. Luna then stated, that I guess I should give your evaluation folder to the Warden.

I then stated, that 99% percent of the time he (Luna) has me address all safety and health issues with Warden O'Brien by myself and that I don't understand why this time speaking with Warden O'Brien has made you (Luna) so upset.

I also stated, that I did not intend for my comment to disrespect him in anyway, but I am just getting tired of the constant harassment and restraint from Mr. Stahley and himself, while performing my duties.

I then informed Mr. Luna, that the constant harassment and restraint from Mr. Stahley and himself has developed into an hostile working environment.

Mr. Luna then stated, you need to shut the fuck up because this is going to be an A-to-B conversation only!

Mr. Luna then stated again, that you (Leroy) have had poor communication skills for almost two years and that it is time for him (Luna) to address this issue formally.

Mr. Luna then stated again, that he (Luna) will be making a negative log entry in my communication element tomorrow and that he will be calling me up to his (Luna's) office to review and sign the log entries.

I informed Mr. Luna, that I will be speaking with Warden O'Brien about our (Luna and I) resent conversation, because my communication skills have been fine until safety issues need to be addressed.

Mr. Luna replied, I don't care nor do I give a shit, what you discuss with the Warden, it won't prevent me from giving you the negative log entry.

Mr. Luna also stated, that he was giving me a direct order, that I (Leroy) will not conduct any safety inspections, conduct any safety walk through's, write/issue any memos, nor conduct/address any safety concerns without informing him first.

I asked Mr. Luna, why are you preventing me from conducting my duties as a safety professional.

Mr. Luna replied, "because that's what I (Luna) am telling you to do!"

I asked Mr. Luna, so I am to report to you prior to conducting any of my duties within the institution, entering or walking the institution grounds, and does that me not to address none emergency/emergency safety issues without informing you (Luna) first.

Mr. Luna replied, yes, you are not to go anywhere in the institution nor conduct any safety related tasks without notifying me (Luna) first.

I informed Warden O'Brien of the conversation that took place with Mr. Luna, Associate Warden Operations on August 8, 2002. Warden O'Brien informed me that Mr. Luna's actions were inappropriate and that he would speak with him (Mr. Luna) in the morning.

After leaving Warden O'Brien's office, I headed back to my office when Mr. Luna walked up beside me. While we both were walking to the back of the institution Mr. Luna stated, that he is looking forward to seeing me tomorrow and formally giving me an negative log entry on my communication element.

Mr. Luna also stated, that he (Luna) saw me speaking with the Warden.

I replied, yes sir, I informed you that I would be speaking to the Warden after our (Mr. Luna and I) conversation in your office.

Mr. Luna replied, no you didn't, but it doesn't matter.

I informed Mr. Luna again, that I had let him know prior to leaving his office.

Mr. Luna then stated, that he did not care what the Warden and I had to discuss, because nothing was going to prevent him from giving me a negative log entry in my communication element.

I replied, that I was sorry that he felt that way and I would inform Warden O'Brien of his concerns.

I spoke with Warden O'Brien concerning the second incident with Mr. Luna and informed Warden O'Brien that I will be submitting to him a formal complaint by the end of the day.

August 8, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: L. A. Smith, Safety Manager

SUBJECT: Conversation with Mr. Gregory Kapusta AW©

On August 8, 2002, at approximately 1:15 p.m., I asked Mr. Kapusta, if I may be able to speak with about Mr. Stahley and Mr. Luna.

Mr. Kapusta replied, come on in and set down, you know your always welcome to talk to me.

I informed Mr. Kapusta, that Mr. Stahley became very upset with me taking photos of the UNICOR Warehouse. I then informed Mr. Kapusta, that Mr. Stahley even got Mr. Luna upset about the issue.

Mr. Kapusta asked, what did Mr. Luna tell you?

I informed Mr. Kapusta, that Mr. Luna said I have been dealing with an irrate Associate Warden, he then asked me who do you think you are and who gave you permission to take photos of any area in the institution. I then informed Mr. Kapusta, that I tried to explain to Mr. Luna that I was also taking photos of the garage and institution warehouse fire pumps.

Mr. Kapusta then asked, doesn't the safety department handle life safety issues?

I replied, Yes, I then informed Mr. Kapusta, that Mr. Luna told me that I have poor communication skills and he was going to give me an official negative log entry for communication. I them informed Mr. Kapusta, that I told Mr. Luna that I have already spoken with Warden O'Brien and Mr. Luna told me that he did give a shit, because the Warden is not my boss he is!

Mr. Kapusta then stated, I don't know why Mr. Stahley and Mr. Luna keep harassing you. Mr. Kapusta then stated, I will go and speak with Warden O'Brien.

I informed Mr. Kapusta, that Mr. Luna even told me to shut the fuck up because this is going to be an A-to-B conversation, because I told him that the constant harassment and restraint from him and Mr. Stahley has developed into a hostile work environment.

Mr. Kapusta then stated, you need to go to your office and relax. Mr. Kapusta also stated, Mr. Luna and Mr. Stahley hate you because what you are tell them your always right and they know you know policy which frustrates them.

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

August 8, 2002

MEMORANDUM TO J. T. O'BRIEN, WARDEN

FROM: L. A. Smith, Safety Manager

SUBJECT: Executive Staff Misconduct and Hostile Work Environment

It is my intention through this memorandum to formally notify you of Executive staff misconduct, which the Executive staff have created an hostile work environment. I will try and explain the violations of misconduct and safety regulations each Associate Warden and Central Office violated.

I will address issues of misconduct from the following Program Statement 3420.09, dated 2/5/99, violations of the Program Statement 1600.08, dated 8/16/99, and Program Statement 3713.17, dated 5/24/96.

1. (3) An employee may not use physical violence, threats or intimidation toward fellow employees, family members of employees, or any visitor to a Bureau work site.

   A Custody staff member (Lieutenant Weir) assaulted me in December 2000, which Executive staff did not pursue further investigation or disciplinary action. The Executive staff interfered with do process of ensuring my civil rights were not violated and to protect me from further violence in the work place. I was coerced into believing that I caused the staff member to physically attack me by Associate Warden Luna and yourself. I was informed by Associate Warden Luna and Yourself, that I couldn't of been assaulted if I didn't feel he could of done any real physical harm to me personally, then I shouldn't be worried about anything.

   The most recent conversation with my supervisor (Associate Warden Operations) would lead me to believe my job at USP Atwater and my future with the Bureau of Prisons is at risk, as long as he remains my supervisor or I remain at USP Atwater. He has personally threatened to discipline me for enforcing the safety and environmental health program. **(SUPPORTING DOCUMENTATION HAS BEEN PROVIDED TO YOUR OFFICE AND SIA)**

2. (4) An employee may not use profane, obscene, or otherwise abusive language when communication with inmates, fellow employees, or others. Employees shall conduct themselves in a manner which will not be demeaning to inmates, fellow employees, or others.

Profane, obscene, or otherwise abusive language such as, mother fucker, I said shut the hell up, shut the hell up, didn't I tell you to shut the hell up, you need to get the hell out of my factory, I don't give a shit, you need to shut the fuck up because this is going to be an A-to-B conversation, which is just some of the unprofessional language expressed towards me by Mr. Stahley and Mr. Luna. **(SUPPORTING DOCUMENTATION CAN BE PROVIDED UPON REQUEST)**

3. Employee alleging discrimination based on race, color, religion, sex, national origin, physical or mental disability, age, or retaliation will have access to the government's complaint resolution process.

   I have been discriminated against by the Executive staff based on my race, color and continued retaliation for reporting a hostile work environment and safety and environmental health concerns, which have not been appropriately addressed by Senior Executive staff according to Bureau Policy and Federal Law. I have asked the Executive staff this question before, if I was anyone else other than a white male would this harassment and retaliation towards me continue after reporting initial and I still have not received an reasonable answer. **(SUPPORTING DOCUMENTATION CAN BE PROVIDED UPON REQUEST)**

4. 5 CFR 2635 Standards of Ethical Conduct for Employees of the Executive Branch

   This continued hostile work environment by Associate Warden I&E, Associate Warden Operations, and other agency leaders (Central Office) is direct violation of Ethical Conduct displayed toward me and the safety program. This behavior does not stop at the Safety Department, but affects several other departments at USP Atwater as well. **(SUPPORTING DOCUMENTATION CAN BE PROVIDED UPON REQUEST)**

Conclusion

In conclusion, I will reiterate the issues we previously discussed concerning the constant harassment, coercion, retaliation, and verbal abuse. These personal attacks towards me have come from the direct enforcement of the safety and environmental health program and environmental concerns affecting the UNICOR Computer Recycling Program Bureau Wide. At no time have I ever conducted myself unprofessionally to either of the Executive staff at USP Atwater or Central Office.

I have established myself as a respected professional in the Occupational Safety and Environmental Health Field. I wish to continue being an effective Safety Manager for USP Atwater and Bureau of Prisons. I have become confused and stressed with the Associate Wardens and other agency leaders continued vicious attacks towards me personally and professionally. I also have become confused why these issues have not been corrected once proper verbal and written notification has been given to the appropriate Executive staff. I can't continue to hide my head in the sand and hope the vultures will go away and not continue to pray on me at well. My position is taxed with providing technical advice and expertise to all executive levels as well as all areas of management. I am required to ensure all staff and inmates work and live in a safe and healthy environment. At times the technical advice and program implementation conflicts with professional decisions and personal agendas that other upper

management staff may have. The professional advice I provide and programs I oversee are founded by Policy set fourth by Agency Leaders, Executive Orders, and the Law, which on several occasions I have been given direct orders or coerced not to pursue any further action by the Associate Warden I&E and Associate Warden Operations. This has clearly compromised me personally, professionally and ethically. This has not only affected my program, staff and myself negatively, but also the agency, which sets the agency up for litigation.

I would like to request that I be placed under your direct supervision and/or be allowed to report directly to you. This will allow all important safety and health issues to be disseminated through you with out any interference or restraint. This request comes only after much thought and deliberation on my part. This has not been taken lightly. I hope by requesting for your assistance on this matter does not create any additional problems for the safety department or myself. I only wish to continue my career with the Bureau of Prison without any reprisal towards myself and/or my future for applying and enforcing the safety and environmental health program and informing you of the continued injustice.

I appreciate your assistance and cooperation in resolving this matter. If there is any further information or documentation needed to support this claim, Please advise.

Warden Schultz unless I direct you to due so because you have no authority to enforce safety policies nor will you go over my head with any other institution issues, do you understand me Smith, I don't care what you think, but you will care about what I think real soon, All you do is look out for yourself at someone else's expense, The Warden is not your supervisor, I am and I will tell you what or when you will address any safety issues with the Warden or anyone else in the institution, do you understand me Smith, You like being a dime dropping Mother Fucker, like some of the other staff in the institution, Mr. Luna then slammed the phone down! **(See Attachments 105, 105a, 105b, & 105c) 18.** On October 25, 2002, Mr. Luna then stated the following: He was going to manage my work schedule, to ensure that I stay busy at all time, He didn't care how you get your work done, but it will be my mission to ensure that you stay busy, It will be my personal mission to ensure you get enough direction and training to ensure you and your department is successful, Let me make sure you heard me when I told you that as long as both of us are her, from now or five years from now it will be my personal mission to ensure I manage everything you do and provide you all the training that I can get for you to ensure that you continue to be a good communicator and hard worker, Do you understand what I am telling you Smith, At least we understand each other now, You are no longer going to be acting for me during the first week of November as previously discussed, because you will be to busy with the assignments I will leave you to complete prior to me returning to the institution and it will be my personal mission to ensure you don't act for me again until either you or I leave, do you understand what I am telling you Smith!
(106, 106a, 106b, 106c, 106d, 106e, 106f, & 106g) 19. On November 5, 2002, Mr. Schultz stated the following: Mr. Schultz then asked, Are you okay with the content in the memorandum, I replied to Warden Schultz, Yes. Do you know that people write things at the heat of the moment, which make them feel good at the time, but realize they still feel the same afterwards. I will talk to Mr. Luna and get back with you. **(See Attachment 107) 20.** On November 5, 2002, I spoke with Mr. Kapusta about informing Mr. Schultz about my current health condition, which my physician relates my stress, anxiety, sweets, and high blood pressure to the retaliation, harassment I continue to receive from Mr. Luna, Mr. Stahley, and others. Mr. Kapusta asked, what did Mr. Schultz have to say? I informed Mr. Kapusta, that Mr. Schultz began comparing to another safety manager from Dublin, California, which Mr. Schultz seemed to completely ignore the situation. Mr. Kapusta then stated, I can't speak for them or their actions, but I will let Mr. Schultz know a few things when the time is right. **(See Attachment 108) 21.** On December 20, 2002, I submitted a formal written memorandum to Mr. Schultz, about Mr. Luna's, Mr. Stahley's, Mr. Novicky's, Mr. Tussey's, and Mr. Lee's Executive staff misconduct and Hostile Work Environment conditions towards me. No investigation conducted. **(See Attachments 109, & 109a) 22. Deposition of Mr. Schultz June 8, 2005**, (Mary Dryovage) **(Page 25) Q.** I'll rephrase the question. What did Mr. Smith tell you that Mr. Luna was doing to him in terms of treating him in a hostile manner? (Mr. Schultz) **A.** My discussions with Mr. Smith in regard to that were that he was frustrated with the discussions that he had with his supervisor in regard to the safety issues that he was working on in Atwater. **Q. And what behavior did he report to you that he was experiencing from Mr. Luna? A. Mr. Luna's communication with him. Q. And did he report that that – the manner in which Mr. Luna communicated with him was hostile? A. At what time? Q. At any time since coming to Atwater. A. I believe that I had discussed this issue with him in 2004 at some point. Q.** And do you recall any specifics of what Mr. Luna was treating him? **A.** Yes, that he, as I'd indicated earlier, I believe, was frustrated with how the communication was developing between not just his supervisor but also with Mr. Stahley. **(Page 26) Q.** And what specifically did Mr. Smith tell you about the manner in which he was being treated by Mr. Stahley? **A.** Similar to the frustration that he was having in dealing with Mr. Luna. **Q.** Now, did you take any steps in response to that information being provided to you by Mr. Smith? **A.** Yes, I did. **Q.** And what did you do? **A.** I discussed on a regular basis with both Mr. Luna and Mr. Stahley the need for good communication, appropriate communication between all parties in insuring that the safety needs were being met for the institution. **(Page 27) Q.** So he didn't claim that

October 24, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Mr. Luna AW(O)**

On October 24, 2002, at 7:20 a.m., Mr. Luna informed me over the radio that he would like for me to give him a call in his office.

Mr. Luna begin to ask me about the Respiratory Protection Program memorandum that I sent to Health Services (October 23, 2002.) He also asked, if it was policy to have a GS-15 review and approve staff respiratory medical evaluation forms.

I replied to Mr. Luna, that Physician Assistants (P.A.'s) can review and approve, with the oversight of a Medical Officer, especially when a medical condition needs further review or clarification.

I then informed Mr. Luna, that in this case where an Assistant Health Services Administrator/Physician Assistant admits he didn't review a staff members medical evaluation form prior to approving the staff member to be fit-tested for a respirator, it would be good professional judgement to have Dr. Franco conduct a final review of all respiratory medical evaluations to ensure this mishap wouldn't happen again in the future. I also mentioned, that the employee has a heart condition, which during fit-testing could cause a lethal health concern and that is why I am requesting not directing Dr. Franco to review the staff and inmate medical evaluation forms. I then mentioned, that I was requesting not directing Health Services to provide an assurance memo to the Safety Department, which would ensure a thorough review of the medical evaluations by Health Services. I finally mentioned to Mr. Luna, the Safety Department would not continue to fit-test anyone without the assurance memo.

Mr. Luna then stated, that you don't have the authority to direct a GS-15 or any other department to provide you an assurance memo without notifying me (Mr. Luna) first. Mr. Luna stated, "that I see you sent this memo to the Warden!" He (Mr. Luna) then stated, "I'm (Mr. Luna) fucking telling you that you are not to inform Warden Schultz of anything without going through me first and as I ordered you not to inform Warden O'Brien, which you continued to do so, you will not address any safety issues with Warden Schultz unless I direct you to due so because you have no authority to enforce safety policies nor will you go over my head with any other institutional issues, do you understand me Smith!"

I again informed Mr. Luna, that the Safety Department will not continue fit-test staff or inmates, unless a thorough review of the Respiratory Medical Evaluation forms have been conducted. Also, I think by reviewing the medical evaluation forms again will be in the best interest for everyone, especially for Health Services.

Mr. Luna replied, that I don't care what you think, but you will care about what I think real soon! Mr. Luna also mentioned, that all you do is look out for yourself at someone else's expense!

I then informed Mr. Luna, that I could provide him policy in writing where it shows the Safety Manager's authority or responsibility, but it shouldn't have to come that. I also informed Mr. Luna, that I could also show him the OSHA standard were the respiratory medical forms are health services responsibility to review and approve.

Mr. Luna then stated, "I want you to provide me the policies."

I informed Mr. Luna, that by protecting the safety and health of staff makes me seem selfish then I am guilty. I also informed Mr. Luna, that I understand that I can give good sound safety advise and only can I request staff to comply with the Safety and Health Program, unless it becomes life threatening, but to ignore any safety and health issue is bad business.

I then informed Mr. Luna, that I did notify him (Mr. Luna) originally on Monday (October 21, 2002) during mainline when the incident occurred, but you told me why are you informing me of this. I further explained, that this serious implication towards Health Services may affect more then one staff member and you replied, this shouldn't be brought to my level yet, speak with Mr. Willis.

Mr. Luna replied, you never mentioned anything to me. Mr. Luna also mentioned, that all you (Mr. Smith) like to do is lie about everything to make yourself look good. Mr. Luna then stated, I am ordering you to direct everything through me before you put out any memos or you address any safety concerns with anyone in the institution and especially Warden Schultz, because what happened with Warden O'Brien will not happen with Warden Schultz!

I informed Mr. Luna, the reason why I went to Warden O'Brien was because of the lack of support towards the Safety and Health Program. I also mentioned, the miss direction or lack of information being provided to Warden O'Brien, caused him to believe that I was a worthless employee and that was prompted from the personal attacks and professional attacks from you (Mr. Luna), Mr. Stahley, and Ms. Gant. I then mentioned, when Warden O'Brien found out that information was not being properly disseminated to him, he informed you (Mr. Luna), and Mr. Stahley, that I was to report directly to him on all safety concerns, prior to them becoming a big issue.

Mr. Luna replied, that the Warden is not your supervisor, I am and I will tell you what or when you will address any safety issues with the Warden or anyone else in the institution, do you understand me Smith!

I informed Mr. Luna, that the only reason why I went to Warden Schultz, was the lack of response, support, and concern from you (Mr. Luna) and Mr. Willis. Also, because Mr. Willis went to speak with Ms. Quiroz, which she felt torn or intimidated for bring her concern to me (Mr. Smith), which she felt was the right thing to do, not to just protect herself, but to protect others.

Mr. Luna then stated, how do you know I wasn't going to speak to Warden Schultz, but of course you (Mr. Smith) had to see him (Warden) first right Smith!

I replied to Mr. Luna, that two days had gone by since I brought the safety and health concern to you (Mr. Luna's) and Mr. Willis's attention and there had not been any further direction from anyone of you (Mr. Luna, Mr. Willis), which this has been protocol for all safety and health issues, workers compensation, and life safety issues over the last year and half.

Mr. Luna stated, you like being a dime dropping mother fucker, like some of the other staff in the institution!

I replied, that I don't like being forced to inform the Warden of any safety and health concerns, because I believe people will always come around and do the right thing, but there are a few staff around here that seem to do the right thing only when I've been forced to put things in writing or when I am forced to address the issues with the Warden. I also mentioned, that when I am faced with doing wrong verses right by any staff member or inmate, I will always do the right thing because it's my job to protect the safety and health of all staff and inmates, and especially the Warden.

Mr. Luna replied, you just like to drop dimes and cause trouble, but I am ordering you not to speak with Warden Schultz about anything, do you understand me Smith!

I informed Mr. Luna, that when a serious safety and health or life safety concern is not being addressed or corrected in a timely manner, I will continue to inform the Warden to protect him and the institution.

Mr. Luna replied, we will see about that Smith! Mr. Luna then stated, that I have given you a direct order not to speak with the Warden about anything, you understand that Smith!

I then asked Mr. Luna, why do you harass and retaliate against your staff that actually perform their jobs at a high level of professionalism.

Mr. Luna then stated, what are you talking about!

I mentioned to Mr. Luna, that he harasses and retaliates against the food service administrator, controller, and myself, which we help all departments and conduct ourselves in a professional manner, but on the other hand the human resource manager, health service administrator, and facilities manager have complaints directed to their department all the time, they stretch the truth, and have internal staffing problems, but you always complement them publically, protect them, and award them.

Mr. Luna then slammed the phone down!

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

October 25, 2002

MEMORANDUM FOR RICHARD T. LUNA, ASSOCIATE WARDEN (O)

FROM: L. A. Smith, Safety Manager

SUBJECT: Safety Manager's Responsibilities

It is my intention through this memorandum to reiterate the issues we discussed on October 24, 2002, at 7:20 a.m., concerning the Respiratory Medical Evaluation Concerns, Report Unsafe and Unhealthy conditions, Employee's Protection Rights, and Safety Manger's abatement of Unsafe and Unhealthy Conditions and Reporting Requirements **(i.e., Warden)**. Per your request I will provide you the OSHA or Bureau Policy affecting the above mentioned concerns.

1. **Respiratory Concerns**:

29 CFR 1910.134 - (c) The program must be administrated by a suitably trained Program Administrator.

29 CFR 1910.134 - (4) Administration of the Medical Questionnaire and Examinations - (i) The medical questionnaire and examinations shall be administered confidentially during the employee's normal working hours or at a time convenient to the employee. The medical questionnaire shall be administered in a manner the ensures that the employee understands its content. (ii) The employer shall provide the employee with an opportunity to discuss the questionnaire and examination results with the Physician or other licensed Health Care Professional PLHCP.

(6) Medical Determination - In determining the employee's ability to use a respirator, the employer shall - (i) Obtain a written recommendation regarding the employee's ability to use the respirator from the PLHCP. (A) Any limitations on respirator use related to the medical condition of the employee, or relating to the workplace conditions in which the respirator will be used, including whether or not the employee is medically able to use the respirator. (C) A statement that the PLHCP has provided the employee with a copy of the PLHCP's written recommendations.

(7) Additional Medical Evaluations - At a minimum, the employer shall provide additional medical evaluations that comply with the requirements of this section - (i) An employee reports medical signs or symptoms that are related to ability to use a respirator. (iii) Information from the respiratory protection program, including observation made during fit-testing and program evaluation, indicates a need for employee reevaluation.

Program Statement 6190.02, Infectious Disease Management - Section 18, part (a) Responsibilities - The Safety Manager shall have the responsibility for implementation, educating, and maintenance of all personal protective equipment as recommended by DHHS for tuberculosis respiratory program. (7) Control Responsibilities - The HSA and Safety Manager shall be responsible for examining and monitoring or replacing regularly and engineering controls.

2. **Report Unsafe or Unhealthy Conditions**:

Program Statement 1600.08, Chapter 1, Page 14, Section I - 2, Any employee or representative of employees who believes that an unsafe or unhealthy condition exist in any workplace where person is employed, has the right to make a report of the unsafe or unhealthy working condition to the Safety Manager, the CEO of the institution, Regional or Central Office staff, or directly to the Department of Labor, Occupational Safety and Health Administration. Since many safety and health problems can be eliminated as soon as they are identified, the existence of a formal channel of communication should not preclude immediate corrective action by an employee's supervisor in response to oral reports of unsafe and unhealthy working conditions where such action is possible.

Program Statement 1600.08, Chapter 1, Page 14, Section I - 2c, Inspection by the Safety Manager or designee shall be conducted upon notification for employee reports of imminent danger conditions, within 8-hours, other than serious safety and environmental health conditions, within 3 days,

3. **Employee's Protection Rights**:

Program Statement 1600.08, Chapter 1, Page 14, Section e, Ensure the prompt abatement of unsafe or unhealthful working conditions.

Program Statement 1600.08, Chapter 1, Page 4, Section g, Ensure the employees are not subject to restraint, interference, coercion, discrimination or reprisal for exercising their rights under Executive Order 12196, 29 CFR 1960, or for participating in the Bureau's Safety and Environmental Health Program.

4. **Safety Manger's Abatement of Unsafe and Unhealthy conditions and Reporting Requirements (i.e., Warden)**:

Program Statement 1600.08, Chapter 1, Page 5, Section D, Imminent Hazards - When the Safety Manager determines that conditions or practices exist in any place of employment which could reasonably

be expected to cause death or serious physical harm, he shall in form the affected employee of the danger and shut down the work or process until such danger can be eliminated. He shall inform in writing the CEO and Regional Safety Administrator of the hazard and action. Reactivation of the work or process shall be contingent upon the Safety Manager's reinspection and written approval.

Finally, being given a direct order not to discuss Safety and Environmental Health concerns with the Warden or other Departments, is direct violation of policy and prevents the effectiveness of the Safety program. The only success of implementing and enforcing a safety program is through verbal and written communication. This is a clear calculated intervention of personal interference and restraint. The Safety Department requests or recommends the need for plan action or corrective action of any deficiency affecting the Safety and Environmental Health Program, which protects the safety and health of all staff and inmates. The Safety Manager's mission is to ensure vital information is properly passed on to the Warden or other Departments, which will allow them to make good professional judgement decisions. We are required to ensure all staff and inmates work and live in a safe and healthy environment. At times the technical advice and program implementation conflicts with professional decisions and personal agendas. The professional advice I provide and programs I oversee are founded by Policy set fourth by Agency Leaders and Executive Orders, which on several occasions I have been given direct orders not to pursue any further action. This has clearly compromised the agency and has made the Warden vulnerable to legal proceedings.

If you have any concerns or questions, please do not hesitate to let me know.

October 25, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: L. A. Smith, Safety Manager

SUBJECT: Conversation with Mr. Luna AW(O)

On October 25, 2002, at approximately 1:30 p.m., Mr. Luna requested to see me in his office immediately and when I began to ask what was wrong, Mr. Luna slammed the phone down.

At approximately 1:50 p.m., I entered Mr. Luna's office and he asked me to sit down, while he was typing something into his computer.

Shortly after I sat down Mr. Luna informed me, that he had read my memo (October 25, 2002), which I had sent him. Mr. Luna then asked me, why did you quote policy to me?

I informed Mr. Luna, that he had asked me to provide him policy, which showed the Safety Manager's authority or responsibility. I also mentioned to Mr. Luna, that this is not all about authority, but this is all about ensuring the safety and health of all staff and inmates. I then asked Mr. Luna, why has he made every safety and health concern identified or addressed by the Safety Department so personal.

Mr. Luna then replied, "I didn't direct you to quote policy to me." Mr. Luna then asked, why I stated that he gave me a direct order not to speak with Warden Schultz?

Mr. Luna's phone then began to ring and shortly after answering it he asked me to step outside his office for a minute. After a couple of minutes had gone by, Mr. Luna requested me back into his office.

I informed Mr. Luna, that he did give me a direct order not to speak with Warden Schultz.

Mr. Luna replied, "I never gave you a direct order not to speak with Warden Schultz, but I did direct you not to speak with Warden Schultz until I (Mr. Smith) had spoken with him (Mr. Luna) first." Mr. Luna then stated, "isn't that what I said Smith!" (with a raised voice)

I replied, yes, at the beginning of our conversation you (Mr. Luna) stated, that I'm fucking telling you not to inform Warden Schultz of anything without going through you first and as I ordered you (Mr. Smith) not to inform Warden O'Brien, which you continued to do so, you will not address any safety issues with Warden Schultz unless I direct you to do so, because you have

no authority to enforce or address safety policies with Warden Schultz nor will you go over my head with any other institution or personal issues.

I then asked Mr. Luna, what concern do you have with my memo?

Mr. Luna replied, "you don't mention anything about me directing you to see me first prior to speaking to the Warden."

I informed Mr. Luna, that the last thing he told me was, I have given you a direct order not to speak with Warden Schultz about anything and then you (Mr. Luna) slammed the phone down.

Mr. Luna then stated, "you are a liar, because that is not what I said!"

I informed Mr. Luna, prior to you telling me that, I had told you when a serious safety and health or life safety concern is not being addressed or corrected in a reasonable time, I will be inclined to inform the Warden to protect him, institution, and the agency and that's when you (Mr. Luna) again gave me a direct order not to speak with the Warden about anything and then you slammed the phone down. I also mentioned, that I thought I was following his last direct order.

Mr. Luna then stated, "you continue to lie, you tell me (Mr. Luna) one thing and go around and tell the Warden something else, your very good at this game Smith!"

I asked Mr. Luna, your calling me a liar? I then mentioned to Mr. Luna, that everything I have identified and addressed as a safety and health concern with the Warden has never been discredited, but information provided by Mr. Stahley, Ms. Gant and himself has been proven to have no truth. I then asked Mr. Luna, what game am I playing, that's a question I ask myself everyday I come into work knowing that I will be harassed, retaliated or coerced by them because of someone's personal agendas?

Mr. Luna replied, yes, you're a liar. Mr. Luna also mentioned, that I was good at wording things in just a manner that he couldn't catch me in a direct lie.

I informed Mr. Luna, that I could see that he was trying to make me frustrated and that he was waiting for me to say something out of line. I also informed Mr. Luna, that I was not going to give him the satisfaction to write me up for insubordination, because I have done nothing wrong to receive this harassment, except for doing my job. I then informed Mr. Luna, that the safety and welfare of staff is not a game too me and that I have informed him (Mr. Luna) of everything going on inside or outside my department, before my department takes any action.

Mr. Luna then became quite. His whole demeanor became calm.

Mr. Luna then mentioned, that I (Mr. Smith) have requested for an additional staff member in the safety department, but I (Mr. Luna) see you have a lot of time on your hands walking

around the administration building and especially in the Associate Wardens area.

I replied, that my job as the Safety Manager is more effective when I am walking the institution and speaking with staff on a more regular basis, then just once a month during the monthly safety inspection. I also mentioned, by speaking with department heads and line staff it makes them more at ease to where they feel they have the support of the safety department, which makes for a positive relationship. I also mentioned, that the reason why I am in the Associate Wardens office is because Ms. Bernhardt (Associate Wardens Secretary) calls me in for time-keeping issues or sanitation issues and Associate Warden Kapusta calls me into his office to address some safety or sanitation issues, which allows my department to correct the safety or sanitation issue before it's brought to the Warden's attention. Also, Mr. Kapusta inquires about safety documentation being turned in on time for all his areas, which normally custody is a thorn in the safety departments side.

Mr. Luna then mentioned, that he was going to manage my work schedule, to ensure that I stay busy at all times.

I then replied, that it seems to me that you are trying to set me up for failure, but what ever assignments you assign me will be accomplished within the time frames you set. I also mentioned, that if I can't accomplish the tasks during my 8-hour shift I will work early or stay late with his okay.

Mr. Luna replied, that he didn't care how I got my work done, but it will be his mission to ensure that I stay busy.

Mr. Luna then mentioned, that it also has been brought to his attention, that I have problems communicating with staff in the institution and that he (Mr. Luna) was going to personally help me improve my communication skills, by sending me to additional training courses. Mr. Luna also mentioned, that I heard your sending personal e-mails directly to Warden Schultz.

I informed Mr. Luna, that I have been sending memorandums addressing safety and health concerns to Warden Schultz, especially when the safety concerns have fallen on death ears or information has not been provided to Warden Schultz accurately, which reflects that good communication skills that six staff seem to have with me because they don't won't to support the safety and health program.

Mr. Luna asked, who authorized you to send memorandums directly to the Warden?

I replied, Warden Schultz directed me too.

I then asked Mr. Luna, if I have had poor communication skills with staff over the past two years, then why do you continue to give me an outstanding evaluation in my communication element.

Mr. Luna did not answer my question.

Mr. Luna then asked, what six staff are you talking about and what safety issues haven't been addressed?

I informed Mr. Luna, that Ms. Gant, Associate Warden Programs, Mr. Stahley, Associate Warden I&E, Mr. Peterson, Facilities Manager, Mr. Willis, Health Services Administrator, Ms. Bellino, Human Resource Manager and himself (Mr. Luna).

Mr. Luna then asked, what issues do you have with Facilities, Health Services, and Human Resources?

I then informed Mr. Luna, that I have discussed all past and present safety and health concerns with him verbally or in writing on several occasions without any result.

I then mentioned, that Facilities hasn't conducted several life safety inspections, haven't put guard rails up at the two annex warehouses, failure to use lockout/tagout procedures, haven't grounded the rec-yard fence to prevent electrical shock to the staff member in tower #7, which is just a few things that haven't been corrected or enforced over the last six months to one year.

I also mentioned, Health Services hasn't provide disposal manifest, EPA Certification from the disposal company, not providing a listing of all staff and inmates currently under the hearing conservation program to all affected departments or programs, and their delinquent in updating staff currently in the respiratory program and continue to give staff their medical evaluation forms to provide to use (Safety Department), which is required to remain in the staff members medical record and poor chemical control etc., which has not been corrected or enforced for the last six months to one year, which or ACA courtesy walk through identified them as high risk for failure.

I then began to mention, Human Resources when Mr. Luna stopped me.

Mr. Luna then asked, what about Human Resources?

I informed Mr. Luna, that on serval occasions I had informed him that the advise Ms. Bellino had been providing him and the Warden on several worker comp claims, was not in compliance with the workers compensation program statement. You then asked me to provide you copy of the program statement for your review and then after reviewing the program statement you informed me that you would support the new measures. You then called Ms. Bellino and asked her to come to your office to discuss the workers comp concerns together. You then asked Ms. Bellino if she was aware of the workers compensation program statement and Ms. Bellino replied, yes. Ms. Bellino then stated, that the content in the program statement did not affect us here (USP Atwater) because of our law enforcement requirements and that she is complying with her human resource manual. I then looked towards you (Mr. Luna) and asked are we going to comply with the workers compensation program statement as previous discussed or are we going to continue to follow Ms. Bellino's direction, which at this point you said we will continue business as usual. I then mentioned, that we are still not in compliance with the workers compensation

Mr. Luna mentioned again, that the reason why staff have a hard time working with you or correcting safety issues is because of your poor communication skills and that you (Mr. Smith) should look at yourself and figure out the problem. Mr. Luna then stated, that it will be his personal mission to ensure I get enough direction and training to ensure you and your department is successful.

I then informed Mr. Luna, that I work well with all staff in the institution and most safety issues are corrected upon notification to the affected department or work detail, but the miss communication is a direct reflection from him and the other three departments under operations. I then stated, that's when you (Mr. Luna) accuse me of having poor communication skills or I have to much time on my hands, which after several verbal notifications and then a written reminders, which anyone would expect the deficiencies would be corrected in a timely manner, but I always seem to be forced to speak to the Warden to get the safety issues corrected and then you get embarrassed, which you start telling me I am not a team player, your looking out just for yourself, dime dropping mother fucker, which is direct harassment and retaliation on your part. Also, you try to coerces me into backing off through threats of negative log entries and false statements to the Warden, instead of just supporting and requesting corrective action be taken by though's departments needing to implement or correct safety and health issues.

Mr. Luna then stated, "let me make sure you heard me (Mr. Luna), when I told you that as long as both of us are her, from now or five years from now it will be my (Mr. Luna's) personal mission to ensure I (Mr. Luna) manage everything you do and provide you all the training that I can get for you to ensure that you continue to be a good communicator and hard worker!" Mr. Luna then stated, "do you understand what I am telling you Smith!" (with a raised voice)

I then informed Mr. Luna, that I think you (Mr. Luna) are threatening me and you are going to set me up for failure, that's what I hear Mr. Luna.

Mr. Luna then replied, at least we understand each other now! Mr. Luna then stated, "you are no longer going to be acting for me (Mr. Luna) during the first week of November as previously discussed, because you will be to busy with the assignments I will leave you to complete prior to me returning to the institution and it will be my personal mission to ensure you don't act for me again until either you (Mr. Smith) or I (Mr. Luna) leave, do you understand what I am telling you Smith!"

I then replied, it is very clear what your personal mission has become, which is clearing creating an hostile working environment. I then mentioned to Mr. Luna, that I will be looking forward to all the challenges he will through my way.

I then left Mr. Luna's office.

November 5, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Warden Schultz**

On November 5, 2002 at approximately 1:20 p.m., Warden Schultz mentioned, that Mr. Luna had spoking with him about a memorandum I (Leroy) recently sent him (Mr. Luna).

I informed Warden Schultz, that I was requested by Mr. Luna to provide him in writing the Safety Manager's responsibilities, which reflected my concerns on the respiratory program.

Warden Schultz then asked, are you okay with content in the memorandum?

I replied, Yes. I then mentioned to Warden Schultz, that Mr. Luna continues to restrain me from being an affective Safety Manager, he also continues threatening me for exercising my right and duty to enforce safety and environmental health concerns. I also mentioned to Warden Schultz, that I provided Mr. Luna with the information he requested from me.

Warden Schultz then stated, do you know that people write things at the heat of the moment, which make them feel good at the time, but realize they still feel the same afterwards.

I informed Warden Schultz, that I didn't write the memorandum to make my self feel good, but to prevent Health Services and Mr. Luna from jeopardizing the health of staff and inmates. I then mentioned to Warden Schultz, that I can't understanding why Mr. Luna continues to harass and retaliate against me for enforcing the Safety and Environmental Health Program and I can't understanding when I have addressed my concerns with Warden O'Brien and himself (Warden Schultz) Mr. Luna still is allowed to continue to harass me.

Warden Schultz then stated, that he would talk to Mr. Luna and get back with me later.

November 5, 2002

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: L. A. Smith, Safety Manager

SUBJECT: Conversation with Mr. Gregory Kapusta AW ©

On November 5, 2002, at approximately 3:00 p.m., I asked Mr. Kapusta, if I may be able to speak with about a conversation I had with Warden Schultz.

Mr. Kapusta replied, yes, come in a set down. Mr. Kapusta then asked, what going on know?

I informed Mr. Kapusta, that I mentioned to Warden Schultz about my current health issues, which I have had anxiety attacks, sweets, high blood pressure and other health concerns. I then informed Mr. Kapusta, that my doctor has related my health condition to additional stress, retaliation, and harassment that I have been receiving from Mr. Stahley, Mr. Luna, and other executive staff for enforcing the safety and health program and addressing the safety and environmental concerns with the computer monitor glass breaking operation.

Mr. Kapusta asked, what did Warden Schultz have to say?

I informed Mr. Kapusta, that he started out like he was very concerned for my health, then he asks me if I knew Michael Goldstein, Safety Manager at Dublin which I told him I did. Warden Schultz also mentioned that Mr. Goldstein accused him of causing him stress for ensuring he was doing his job.

Mr. Kapusta then asked, what did you tell Warden Schultz?

I informed Mr. Kapusta, that I said I have never been accused of not doing my job, but I have been harassed for it. Then Warden Schultz said that's what Mr. Goldstein said also. I then informed Mr. Kapusta, that Warden Schultz was acting as if my health and the retaliation and harassment wasn't happening or he was going to completely ignore the situation.

Mr. Kapusta then stated, I will speak with Warden Schultz.

I informed Mr. Kapusta, that I don't think it will do any good, because I told him that I have not received any negative log entries and that my situation is much different then what he had with Mr. Goldstein. Then Warden Shultz replied, I guess and are you sure. I then informed Mr. Kapusta the I needed to vent, because I can't understand why Warden O'Brien and Warden Schultz won't put a stop to all the retaliation and harassment.

Mr. Kapusta then stated, I can't speak for them or their actions, but I will let Warden Schultz know a few things when the time is right.

I thanked Mr. Kapusta then went back to my office.

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

December 20, 2002

MEMORANDUM TO PAUL M. SCHULTZ, WARDEN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Executive Staff Misconduct and Hostile Work Environment**

I spoke with you earlier today at approximately 4:00 p.m., which I believe that everything will remain the same and nothing will prevent the continued retaliation and harassment by the Executive staff. This can not be allowed to continue as business as usual, because my moral, health, and most importantly my family have been affected by the hostile work environment. I have put my trust in you and former Warden O'Brien to ensure I am protected and that Bureau policy and Federal laws will be enforced.

I have informed you and Warden O'Brien on several occasions about violations of Program Statement 3420.09, Program Statement 1600.08, Executive Order 12196, 29 CFR 1960, Program Statement 1210.24, and other OSHA guidelines by Mr. Richard T. Luna, Associate Warden of Operations, Mr. Thomas Stahley, Associate Warden of Industries, Mr. Larry Novicky, Central Office, Mr. Steve Tussey, Cental Officer, and Mr. John Lee, Central Office. This now includes you and Warden O'Brien for failure to report and failure to forward the most serious violations to the Office of Internal Affairs for further investigation.

This all stems from me enforcing the Bureau's Safety and Environmental Health Program and ensuring the Safety and Health of staff and inmate workers dissembling and breaking Cathode Ray Tubes (CRT's) at USP Atwater and other Institutions, which Federal Prison Industries and Bureau of Prison are working together (Conspiracy) to desperately coverup these violations of policy, law, and safety and health dangers.

Once again, I have notified you verbally and now in writing of the continued violations of Bureau Policy, Law, Executive Order, OSHA, and abuse of authority towards me by the Executive staff from USP Atwater all the way to the Central Office.

Finally, I would like to request that my family and I be reassigned to another Institution of our choosing. I have entered the Employee Assistance Program (EAP) to help work out my stress, anxiety, and anger.

I appreciate your assistance and cooperation in resolving this matter. If there is any further information or documentation needed to support this claim, Please advise.

there was no basis for you to give him those instructions, did he? **A.** He did not. **Q.** And what was Mr. Stahley's response to being instructed? **A.** Similar to Mr. Luna's. **(Page 29) Q.** Well, what was Mr. Kapusta's input? **A.** That he had discussed with Mr. Smith Mr. Smith's frustration with dealing with Mr. Stahley and Mr. Luna. **Q. Now, do you recall when you first told Stahley and Luna to work on their communication with Mr. Smith? A. Not specifically, I don't. It would have been in possibly 2002, late 2002 or early 2003. It was probably in 2002. (Page 57) Q.** Did you send Mr. Smith's allegations about Mr. Luna's treatment of him to the Office of Internal Affairs after learning of the reasons why Mr. Smith had to go out on stress leave. **A.** I did not. **Q.** So you didn't take any action to get an investigation into whether Mr. Luna's conduct was appropriate? **(Page 59) A.** I did not refer the matter. **Deposition of Mr. Luna April 21, 2005**, (Mary Dryovage) **(Page 29) Q.** Do you recall having with Mr. Smith regarding the treatment that he experienced by Mr. Stahley using profane language, making comments like calling him mother fucker, telling him to shut the heall up, telling him you need to get the hell out of my factory and other abuse of authority. (Mr. Luna) **A.** I remember him telling me that, yes. **Q.** And what did you do in response to those allegations? **A.** I reported it to my supervisor. **Q.** And that was O'Brien at the time? **A.** I don't believe – I don't remember whether it was O'Brien or Mr. Schultz. **Q.** And to your knowledge was anything done about it? **(Page 30)** A. Again, my position was to report it, and it's up to the Warden to do whatever is deemed necessary.

NOTE: Mr. Schultz stated, that I discussed Mr. Luna's hostile communication with me sometime in 2004 initially. Mr. Schultz then stated, that he first told Mr. Stahley and Mr. Luna to work on their communication with Mr. Smith in 2002, late 2002, early 2003, or it was probably in 2002, which he never reports or investigates my allegations.
(See Attachments 110, 110a, 110b, 110c, 110d, 110e, 110f, & 110f)

23. On February 11, 2003, Mr. Luna stated the following, I have already told you that I am no longer involved with any issues concerning UNICOR, I have told you that in the past, but I have spoken with the Warden and he agrees with me that I don't need to be involved with UNICOR issues and that you need to speak with Stahley yourself. Mr. Luna again stated, I don't need to be involved with UNICOR issues, you need to speak with Mr. Stahley and work out any safety concerns you may have.
(See Attachments 111, & 111a) 23. On February 19, 2003, I was diagnosed with Anxiety, Depression, and gas reflux, by Dr. Taggert, which was directly related to work stress. Mr. Luna stated the following: this really goes to show the type of Department Head you really are, are you on any medications, what's the name of the medication your taking, If your taking what I think your taking, you are a liability to the institution and you need to leave and go home immediately! **(See Attachment 112) 24.** On February 26, 2003, I called Warden Schultz and notified him of Mr. Luna's conversation with me on February 19, 2003. I then informed Warden Schultz, that I guess Mr. Stahley and Mr. Luna can tell staff to shut the Fuck up, call them Mother Fucker, use intimidation, coercion, retaliation tactics towards staff for enforcing the Safety and Environmental Health Program, which seems to be an acceptable practice at USP Atwater. I also informed Warden Schultz, that I have supporting documentation to backup my allegations if he wished to see it. He stated, Elroy you need to take all the time you need to recover and be ready to return to work, Elroy have you eaten lunch, Elroy you need to take care of yourself and you need to eat lunch and have a donut for desert. **(See Attachments 113, & 113a) 25.** On March 3, 2003, Ms. Victoria Pagan, Camp Administrator stated the following: Mr. Stahley, Mr. Luna, and the Central Office staff are looking for a place to hide, because of the recent air sample results, Mr. Luna had told her that the Safety Manager was right about everything, she knew the Safety Manager was doing the right thing the whole time, but I needed to let Mr. Luna and Mr. Stahley fall on their face, UNICOR has a lot to answer for. **(See Attachments 114, & 114a) 26.** On March 19, 2003, I returned to full duty after being out on stress leave. When I returned Warden Schultz switched my supervisor from Mr. Luna to Mr. Booth. **Deposition of Mr. Schultz June 8, 2005**, (Mary Dryovage) **Q.** Whose supervision did you place

BY MS. DRYOVAGE: We're going to stop and change the tape.

Q. I'll rephrase the question. What did Mr. Smith tell you that Mr. Luna was doing to him in terms of treating him in a hostile manner?

A. My discussions with Mr. Smith in regard to that were that he was frustrated with the discussions that he had with his supervisor in regard to the safety issues that he was working on in Atwater.

Q. And what behavior did he report to you that he was experiencing from Mr. Luna?

A. Mr. Luna's communication with him.

Q. And did he report that that -- the manner in which Mr. Luna communicated with him was hostile?

A. At what time?

Q. At any time since coming to Atwater.

A. I believe that I had discussed the issue with him in 2004 at some point.

Q. And do you recall any specifics of what Mr. Smith relayed to you about the manner in which Mr. Luna was treating him?

A. Yes, that he, as I'd indicated earlier, I believe, was frustrated with how the communication was developing between not just his supervisor but

also with Mr. Stahley.

Q. And what specifically did Mr. Smith tell you about the manner in which he was being treated by Mr. Stahley?

A. Similar to the frustration that he was having in dealing with Mr. Luna.

Q. Now, did you take any steps in response to that information being provided to you by Mr. Smith?

A. Yes, I did.

Q. And what did you do?

A. I discussed on a regular basis with both Mr. Luna and Mr. Stahley the need for good communication, appropriate communication between all parties in insuring that the safety needs were being met for the institution.

Q. Did Mr. Luna tell you that he did not feel it was appropriate for him to be given a directive, you know, whatever you just testified, that you talked to him about improving the way in which he communicated to Mr. Smith, was there any response from Mr. Luna?

A. There were two questions there. Which one do you want answered?

Q. Well, I'll just put it this way: What

was Mr. Luna's response when you talked to him?

A. Mr. Luna indicated that he would work on his communication skills.

Q. So he didn't claim that there was no basis for you to give him those instructions, did he?

A. He did not.

Q. And was Mr. Stahley in the room during these instructions to work on communication?

A. He may have been. If he wasn't in the room, then I spoke to him separately.

Q. And what was Mr. Stahley's response to being instructed?

A. Similar to Mr. Luna, yes.

Q. So you also instructed Mr. Stahley to work on his communication?

A. I instructed all my executive staff to do that.

Q. But we're talking about specifically in response to Mr. Smith's telling you about the way in which he was being treated. You spoke with Luna and Stahley, did you not?

A. Yes.

Q. And did you speak with them separately or at the same time?

A. Yes. Both.

Q. Well, what was Mr. Kapusta's input?

A. That he had discussed with Mr. Smith Mr. Smith's frustrations with dealing with Mr. Stahley and Mr. Luna.

Q. Now, do you recall when you first told Stahley and Luna to work on their communication with Mr. Smith?

A. Not specifically, I don't. It would have been in possibly 2002, late 2002 or early 2003. It was probably in 2002.

Q. Did Mr. Smith continue to report that the behavior had not subsided after that first meeting in which you instructed them to work on their communication skills?

A. There were occasions when it would improve and there were occasions when it would not.

Q. And did you take any action when the incidents occurred that showed that they were continuing to exhibit this failure to communicate with Mr. Smith?

A. My actions were similar to those initially in that because there had been success in the communication, my assumption was is that it would be more specific or incident oriented as opposed to a continuing behavior.

in order to successfully have a good safety program and also a good program down in UNICOR.

Q. Did you send Mr. Smith's allegations about Mr. Luna's treatment of him to the Office of Internal Affairs after learning of the reasons why Mr. Smith had to go out on stress leave?

A. I did not.

Q. Did you investigate Mr. Smith's allegations yourself?

MR. BAUCH: Objection, he's given previous testimony on this. You've asked him about whether he made the referral to internal affairs earlier. You're just repeating the question so I'll object on that basis, asked and answered.

BY MS. DRYOVAGE:

Q. Okay. Well, we're now talking about this February and March 2003 time period, whether there was any referral to the Office of Internal Affairs.

A. I considered Mr. Smith's discussions with me, because that's pretty much what I received from him were just discussions, to be -- as I'd indicated earlier, my responsibility was to insure that his -- the communication between the parties improved to an appropriate level.

Q. So you didn't take any action to get an

investigation into whether Mr. Luna's conduct was appropriate?

A. I did not refer the matter.

Q. Now, did you have any discussions about Mr. Smith's Office of Workers' Comp claim?

A. I'm aware that there are more than one.

Q. And when did you first learn of Mr. Smith filing with the Office of Workers' Comp?

A. I believe Mr. Smith brought it to my attention.

Q. Do you recall approximately when you learned of it?

A. It was sometime after he returned to work, if you're referring to the March 2003 area.

Q. Do you recall Mr. Smith asking whether he could testify at a office of worker comp hearing involving other staff members?

A. Yes.

Q. And what staff members did he request to testify as a witness?

A. I believe that was his subordinate.

Q. And what is his name?

A. Phil Rodriguez.

Q. Did you provide him with authorization to testify in Phil Rodriguez's OWCP hearing?

Mr. Stahley.

Q. Could you mark this as Exhibit 8.

(Appellant's Exhibit No. 8 was marked for identification.)

BY MS. DRYOVAGE:

Q. Could you identify that document?

A. No, I don't. You have a signed copy?

Q. Do you recall receiving a memo dated July 10th, 2002 from Mr. Smith?

A. No, I don't.

Q. Do you recall meeting with Mr. Smith regarding the treatment that he experienced by Mr. Stahley using profane language, making comments like calling him motherfucker, telling him to shut the hell up, telling him you need to get the hell out of my factory and other abuse of authority?

A. I remember him telling me that, yes.

Q. And what did you do in response to those allegations?

A. I reported it to my supervisor.

Q. And that was Warden O'Brien at the time?

A. I don't believe -- I don't remember whether it was O'Brien or Mr. Schultz.

Q. And to your knowledge was anything done about it?

A. Again, my position was to report it, and it's up to the warden to do whatever is deemed necessary.

Q. To your knowledge was Mr. Stahley ever disciplined for his treatment of Mr. Smith?

A. I couldn't tell you that for sure.

Q. You were never interviewed about your knowledge of Mr. Stahley's treatment of Mr. Smith?

A. No.

Q. And to your knowledge there was no investigation of Mr. Stahley?

A. To my knowledge, no.

Q. Now, did you have any discussions with Mr. Stahley about his treatment of Mr. Smith?

A. No, I didn't.

Q. And why not?

A. Because we were peers. It should be up to the warden to do that.

Q. Now, do you recall Mr. Smith sending you a copy of an October 23rd, 2002 memorandum that he sent to Ricardo Willis regarding the respiratory protection program?

A. I don't remember the dates, but I remember the respiratory program, yes.

Q. We'll mark this as Exhibit 9.

February 11, 2003

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **Leroy A. Smith Jr., Safety Manager**

SUBJECT: **Conversation with Mr. Luna and Mr. Stahley**

On February 11, 2003 at approximately 12:40 p.m., I called Mr. Luna to inform him that I received a faxed copy of the glass breaking operation air sampling test results and discussion from Occu-Tec. I informed Mr. Luna that there was some concerns that need to be addressed, especially with the air sampling conducted at the glass breaking booths exhaust system.

Mr. Luna then asked, have you spoken with Stahley?

I replied, No.

Mr. Luna began laughing and stated, "I have already told you that I am no longer involved with any issues concerning UNICOR." Mr. Luna then mentioned, I think you need to speak with Mr. Stahley about this first.

I informed Mr. Luna, that I was informing him per his request and that way he would not be blind sided.

Mr. Luna again began laughing and stated, I have spoken with the Warden and he agrees with me that I don't need to be involved with UNICOR issues and that you need to speak with Stahley.

I then mentioned to Mr. Luna, that I would expect my supervisor would want to be informed and that he would still support me on safety issues when necessary.

Mr. Luna then stated, "I don't need to be informed and you need to just take care it on your own."

I then called Mr. Stahley and informed him of my concerns. I informed Mr. Stahley, that the glass breaking operation should be temporarily suspended based on the air sample taken at the glass breaking exhaust system that exceeded the OSHA Pel, TLV, and action level for cadmium.

Mr. Stahley then asked, am I hearing you right that you want to shut down the glass breaking operation.

I informed Mr. Stahley, that I would strongly recommend that the glass breaking operation should be temporarily suspended because of the lead, cadmium, and other harmful metals being released into the air, which could expose staff and inmate workers.

Mr. Stahley then stated, "I disagree with you and we will see about this and slammed the phone down."

At approximately 1:10 p.m., I received a phone call in my office from Mr. Luna.

Mr. Luna informed me, that he received a page from the Warden and the Warden does want you to do anything about the Glass Breaking Operation until he speaks with you personally.

I replied, that I understood and Mr. Luna then hung up the phone.

February 19, 2003

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Mr. Luna**

On February 19, 2003 at approximately 3:30 p.m., I went to Mr. Luna's office to inform him that my doctor wants me to take time off away from work. I handed Mr. Luna my medical slip and sick leave slip to sign.

Mr. Luna then stated, "You are going to be gone for thirty days!"

I informed Mr. Luna, that my doctor originally wanted me out for sixty to ninety days, but I asked him to start with thirty days to see how I am feeling at that time.

Mr. Luna then stated, "this really goes to show the type of Department Head you really are.

I then mentioned to Mr. Luna, that I feel based of his evaluations and the Warden seeking my professional advise on sensitive issues, speaks highly about me personal and professionally.

Mr. Luna then asked, "Are you on any medications?"

I replied, that my doctor has prescribe me medication, as part of my treatment.

Mr. Luna then asked, "What's the name of the medication your taking?"

I informed Mr. Luna, that I don't remember the name right off hand, but it doesn't prevent me from performing my duties or driving in anyway or my Doctor would of informed me of that.

Mr. Luna then stated, "If your taking what I think your taking, you are a liability to the institution and you need to leave and go home immediately!"

I then asked Mr. Luna, what do you mean that I am a liability to this institution?

Mr. Luna replied, "Exactly what I said!" "If your on any medication right now, you are a liability to the institution and you need to go home immediately!"

I then mentioned to Mr. Luna, that I would of expected his comments from a young Bureau employee, not a seasoned one. I also mentioned to Mr. Luna, that I expected him to ask me how I

February 26, 2003

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Warden Schultz**

On February 26, 2003 at approximately 12:00 p.m., I called Warden Schultz in his office from home to speak with him on my current medical condition and the conversation with Mr. Luna the week prior.

I informed Warden Schultz, that my doctor has requested for me to take thirty (30) days away from work for Anxiety Attacks, Stress, and Gas Reflux. I also informed Warden Schultz, that back in November, 2002, I had informed him of ongoing health concerns I was having, which I informed him my doctor wanted me to take time away from work back then, but per our previous discussion the harassment and retaliation was going stop, which it didn't.

I then asked Warden Schultz, if Mr. Luna talked to him about the conversation we (Mr. Luna and I) had last week?

Warden Schultz replied, that Mr. Luna mentioned that you needed to take time off from work because of health reasons.

I asked Warden Schultz, if Mr. Luna mentioned anything about his unprofessional conduct?

Warden Schultz replied, No.

I informed Warden Schultz, that I provided Mr. Luna with my doctor's slip, which he make comments like, this real shows what type of Department Heads you are, are you on medication and what type, and if your on medication you are a liability to the institution. I then informed Warden Schultz, that I thought Mr. Luna would of been more concerned about my current medical condition, but instead he began to harass me like he has for two years.

Warden Schultz then stated, that he wasn't aware of anything that transpired between Luna and yourself.

I then informed Warden Schultz, that my health concerns are directly related to the harassment, retaliation, verbal threats, and coercion from Mr. Stahley, Mr. Luna, and other Central Office staff towards me for the last two years, which nobody seems to care.

Warden Schultz then stated, that you need to relax and take the time off to recover and when you return you'll be ready to take care of business.

I informed Warden Schultz, that I have been taking care of business for the institution for two years, I also have been trying to prevent serious harm to staff and inmate workers. I also informed Warden Schultz, that the exposure to staff and future environmental concerns if not contained or corrected appropriately will cause the Bureau serious litigation concerns. I then informed Warden Schultz, that the institution Executive staff's conduct has been criminal at the least.

Warden Schultz replied, that I haven't heard anyone mentioning that you haven't been doing your job, but maybe how you have been handling yourself professionally.

I informed Warden Schultz, that I guess when Associate Wardens (Mr. Stahley and Mr. Luna) tell staff to shut the fuckup, call them mother fucker, use intimidation, coercion, retaliation, tactics towards staff for enforcing the Safety and Health Program, which seems to be an acceptable practice at USP Atwater. I also informed Warden Schultz, that I have supporting documentation to backup my allegations if he wished to see it.

Warden Schultz then stated, Elroy you need to take all the time you need to recover and be ready to return work. Warden Schultz asked, Elroy have you eaten lunch?

I replied, no.

Warden Schultz then stated, Elroy, you need to take care of yourself and need have lunch and a donut for desert.

I then asked Warden Schultz, if this happened to anyone other then a white male, would this harassment continue like it has? I also asked Warden Schultz, that I would like to request that I be placed directly under his direct supervision upon my return?

Warden Schultz replied, that I should relax and take all the time I need to take care myself. Warden Schultz also mentioned, that everything will be alright when I returned work and that I should enjoy my time off.

I then informed Warden Schultz, that I hope everything will be corrected when I return to work, because if everything is still the same, I will be forced to take my case outside the agency.

Warden Schultz replied, I don't think it will come to that Elroy, you need to relax and take care of yourself.

I then mentioned to Warden Schultz, that I appreciate him taking time to listen to my concerns.

Warden Schultz replied, anytime Elroy, take care.

March 3, 2003

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Ms. Pagan**

On March 3, 2003 at approximately 2:45 p.m., Ms. Pagan, Camp Administrator called my home to speak with me.

Ms. Pagan asked, how are you doing?

I replied, I am feeling much better.

Ms. Pagan then mentioned, that I should take care of myself, because they need me back to work.

I mentioned to Ms. Pagan, that she is the first person from the Executive staff to call me at home and see how I am doing. I then mentioned to Ms. Pagan, that goes to show how much Mr. Luna (Supervisor) really cares about me personally.

Ms. Pagan also mentioned, that Stahley, Luna, and Central Office staff are looking for a place to hide, because of the recent air sample results. Ms. Pagan then mentioned, that even Luna had told her that Leroy was right about everything.

I informed Ms. Pagan, that I have tried to protect staff and inmate workers from the hazardous metals associated with the computer monitors over the past two years. I also informed Ms. Pagan, that UNICOR Industries has exposed staff and inmate workers for at least two years prior to USP Atwater coming on line, what are they going to do about that.

Ms. Pagan replied, that she knew I was doing the right thing the whole time, but I needed to let Luna and Stahley fall on their face. Ms. Pagan also mentioned, that UNICOR has a lot to answer for.

I then informed Ms. Pagan, that Warden Schultz should have prevented Mr. Luna and Mr. Stahley from continuing to harass and retaliate against me for enforcing the safety and environmental health program, but that never happened after each time I reported the incident and asked for his help.

Ms. Pagan then stated, I told you that things would work out and that you had nothing to worry about. Ms. Pagan then stated, you caused yourself to become sick and you shouldn't have taken things so personal.

I asked Ms. Pagan, why would you say my current medical condition is my fault.

Ms. Pagan replied, I told you let them know your safety concerns, document it to file, and walk away, but you kept confronting them with the safety concerns.

I asked Ms. Pagan, if I had walked away after informing Warden Schultz, Mr. Stahley, or Mr. Luna, without conducting any followup to ensure the safety concerns had been corrected, which could cause staff or inmate workers to be seriously injured or develop health problems from being exposed by the hazardous metals contained in the computer monitors, would it be Warden Schultz, Mr. Stahley, or Mr. Luna's fault or would it be mine?

Ms. Pagan replied, I believe with proper supporting documentation to show you notified the appropriate staff of the current safety and health concern, that they would be at fault and not yourself.

I then mentioned to Ms. Pagan, that she would be wrong and that Warden Schultz, Mr. Luna, and Mr. Stahley would deny ever being informed.

I then informed Ms. Pagan, that Bureau Policy and Federal OSHA don't allow me the freedom to see gray areas. I also informed Ms. Pagan, that once I became aware of the safety or health concern, I become obligated by law to ensure the affected staff, inmate, and Warden Schultz are notified of the unsafe or unhealthy concerns. I then notified Ms. Pagan, that I am responsible to ensure the safety or health concerns have been properly abated by Bureau Policy, not the Warden.

Ms. Pagan then stated, I don't believe you would be held responsible for Stahley and Luna's mistakes.

I informed Ms. Pagan, that I am surprised that you would say that, knowing everything that has gone on over the past two years. I once again informed Ms. Pagan, that I didn't cause myself to become sick, but those who verbally threatened me, harassed me, retaliated against me, and threatened me personally and professionally caused me to become sick. I then mentioned to Ms. Pagan, that included Warden O'Brien and Warden Schultz.

Ms. Pagan then stated, that I need to go and hung up on the phone.

Mr. Smith under when he returned to work? (Mr. Schultz) **A.** I believe that was Mr. Gonzalez. **Q.** Do you recall placing him under Mr. Booth's Supervision? **A.** Oh, yes. It was Booth first and I thin Mr. Gonzalez is now his supervisor. **Q.** And why did you place him under Mr. Booth's supervision at that time? **A.** My main concern in regard to the level of communication that was necessary for us to complete all the tasks down in UNICOR as well as prepare our institution for all the other safety issues or concerns or programs that we were running in safety, I thought it was the best to provide Mr. Smith and Mr. Booth with the opportunity to work on those issues that were most important to the institution. **Q.** Now, at the time that you assigned him to Mr. Booth's supervision, who had been his previous supervisor? **A.** Mr. Luna. **Deposition of Mr. Luna April 21, 2005,** (Mary Dryovage) **Q.** And why was it that your supervisor authority over Mr. Smith was changed from you to Mr. Booth? (Mr. Luna) A. Mr. Smith requested it. **Q.** And do you know why he request it? **A.** He had some problems with the way I managed him. **Deposition of Mr. Booth April 21, 2005,** (Mary Dryovage) **Q.** And do you know why Richard Luna was removed as his supervisor? (Mr. Booth) **A.** I understood it to be a personality conflict.

NOTE: Again, all three executive staff have different accounts why I was removed from Mr. Luna's supervision and placed under Mr. Booth. I am currently under Mr. Gonzalez's supervision, which makes three supervisors in five years, no other department head has been ostracized in this manner at USP Atwater. **(See Attachments 115, 115a, 115b, 115c, & 115d)**

27. On April 21, 2003, Mr. Luna stated the following: I admit that I threatened you on several occasions, but you knew I wouldn't of followed through, especially when I promised someone (Mr. Haro) that I would take care of you and I keep my promises, things shouldn't of happened the way they did, but we can't change the past, but we can move forward and continue to work together.
(See Attachment 116, & 116a) 28. On June 3, 2003, Mr. Schultz stated the following: Mr. Robert M. Haro, Western Regional Director mentioned if Leroy goes forward with his claim, he will force use to fight against him, Mr. Haro mentioned if he decides not to go forward with his OWCP claim it will be best for him and everyone involved, I don't think Mr. Haro threatening you, but I do think his telling you to look at the issues more closely and to see if there really as bad as you perceive them to be.
(See Attachments 117, 117a, & 117b) 29. On June 9, 2003, Mr. Peterson stated the following: I don't give a crap what you think, you need to have your ass beat, you can interpret it anyway you want, you are self centered, cut throat, Kiss Ass Mother Fucker, I don't really give a Fuck anymore and your sorry Mother Fucking Ass can Kiss my Ass Bitch, No Investigation was conducted by the Institution nor OIA. **Deposition of Mr. Luna April 21, 2005,** (Mary Dryovage) (Page 36) **Q.** Now, did Mr. Smith also inform you of the hostile work environment created by Bill Peterson? (Mr. Luna) **A.** I don't recall exactly which one it was, but Mr. Smith brought up several allegations about several staff. **Q.** And did he inform you that he had a fear of Mr. Peterson's threats of violence and physical harm could result in physical harm to him? (Page 37) **A.** I don't remember that exact words that Mr. Smith used, but I reported it up the line. **Q.** And you reported it to? **A.** The warden. **Q.** And what did the warden do? **A.** Again, that's the warden's business. **Q.** To your knowledge was Mr. Peterson disciplined? **A.** As far as I know, he wasn't. He retired. **Deposition of Mr. Schultz June 8, 2005,** (Mary Dryovage) (Page 77) **Q.** Now, at this point were you aware that Mr. Bill Peterson physically threatened and verbally threatened Mr. Smith on June 9, 2003? (Page 78) **A.** I am not really sure exactly what those terms you're referring to mean. I am aware that Mr. Smith and Mr. Peterson had a verbal confrontation. **Q.** And did you question Mr. Smith or Mr. Peterson regarding what occurred? **A.** I don't believe I questioned either one. I believe it was brought to my attention some months later that it had occurred. **Q.** And who brought this information to your attention? **A.** I believe it was Mr. Luna. (Page 80) **Q.** Was Mr. Luna required by policy to inform you immediately of the verbal confrontation by Bill Peterson and Mr. Smith? **A.** I believe managers in the Bureau of Prisons, as these issues are brought to

Q. Did you ever hesitate to use the term?

A. I didn't use it that often.

Q. Now, do you recall making comments to Mr. Smith about his obesity?

MR. BAUCH: Objection for relevance in the whistle blower case that you're taking the deposition for.

THE WITNESS: I don't recall speaking with Mr. Smith about his obesity.

BY MS. DRYOVAGE:

Q. Well, did you consider Mr. Smith to be obese?

A. No.

Q. Are you aware he's been diagnosed as being obese?

A. No.

Q. Now, at some point Mr. Smith returned to his job after being out on stress leave, did he not?

A. Yes, he did.

Q. And that was approximately a month later, on March 20th, 2003?

A. I believe so.

Q. Whose supervision did you place Mr. Smith under when he returned to work?

A. I believe that was Mr. Gonzalez.

Q. Do you recall placing him under Mr. Booth's supervision?

A. Oh, yes. It was Booth first and I think Mr. Gonzalez is now his supervisor.

Q. And why did you place him under Mr. Booth's supervision at that time?

A. My main concern in regard to the level of communication that was necessary for us to complete all the tasks down in UNICOR as well as prepare our institution for all the other safety issues or concerns or programs that we were running in safety, I thought it was best to provide Mr. Smith and Mr. Booth with the opportunity to work on those issues that were most important to the institution.

Q. Now, at the time that you assigned him to Mr. Booth's supervision, who had been his previous supervisor?

A. Mr. Luna.

Q. And why did you assign him from Mr. Luna to Mr. Booth?

A. I believe I just answered that. It was when Mr. Booth arrived I thought it was necessary for us to continue to try to insure that the program, both in UNICOR and the rest of the institution, was operating at its highest level or as high as it could

A. When the transfer was done between Mr. Booth and myself.

Q. And do you recall the month and year of that?

A. No, I sure don't.

Q. And why was it that your supervisor authority over Mr. Smith was changed from you to Mr. Booth?

A. Mr. Smith requested it.

Q. And do you know why he requested it?

A. He had some problems with the way I managed him.

Q. And do you have any documentation about your interaction with him?

A. No, I don't.

Q. Now, did you shred any documents when you transferred out of being Mr. Smith's supervisor?

A. No, I didn't.

Q. You keep copies of the e-mails that you send, do you not?

A. No, I don't.

the break we were talking about the ACA process. What was your understanding of Mr. Smith's role in that process?

A. Significant role in safety, sanitation, MSDS issues.

Q. And what is MSDS?

A. Material safety data -- took me a second. Sorry. One of those Bureau of Prisons acronyms.

Q. Now, were you aware that Mr. Smith was on stress leave in March of 2004?

A. 2003, I believe.

Q. March 2003?

A. Yes.

Q. And do you know why Richard Luna was removed as his supervisor?

A. I understood it to be a personality conflict. I didn't really ask a lot of questions. I didn't need to. I was a new incoming associate warden, and I took care of business once I got there.

Q. Now, did you have discussions with Mr. Smith the following year regarding his OWCP stress claim in June of 2004?

A. I had discussions. I can't recall the exact month. The answer is yes.

Q. Did Mr. Smith tell you about the conversation he had with Warden Schultz about his OWCP claim?

A. He did have a conversation with me

April 21, 2003

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Mr. Luna**

On April 21, 2003 at approximately 9:30 a.m., Mr. Booth informed me that I needed to see Mr. Luna about my yearly evaluation.

Approximately 9:40 a.m., I entered Mr. Luna's office and informed him that Mr. Booth requested me to get with him about my evaluation.

Mr. Luna then asked for me to sit down. He then handed me my evaluation to review.

While reviewing my yearly evaluation, I mentioned to Mr. Luna, that I really wished things didn't happen the way they did. I then mentioned, that I wished he could of supported me and believed in me more. I also mentioned, that I was surprised that he wanted to give me my yearly eval.

Mr. Luna then replied, "I was really pissed off with you, but as time passes I am getting over it."

I mentioned to Mr. Luna, that I heard the environmental health concerns that I identified with the glass breaking operation has come to light at the Institution, Regional Office, and Central Office, which staff are beginning to back pedaling and looking for cover. I also mentioned, that I hoped he would understand why I stood firm on ensuring staff, inmates, and the Bureau were protected from environmental hazards and litigation issues, which not only impacted USP Atwater, but other UNICOR Factories Bureau-Wide. I then mentioned, my actions weren't personal, but professional, which our relationship ended when he began to believe the lies and assisted with the personal and professional attacks to discredit me.

Mr. Luna then stated, "I admit that I threatened you on several occasions, but you knew I wouldn't of followed through, especially when I promised someone (Mr. Haro) that I would take care of you and I keep my promises."

I then informed Mr. Luna, that he had my loyalty even up to the day I became sick, because I could of reported the hostile working environment and environmental hazards, which would of taken things out of his hands and the Wardens. I also mentioned, that if he really believed in taking care of me, he wouldn't of never threatened me on several occasions and he would of supported me more. I finally mentioned, the person (Mr. Haro)he promised this too, believes a leader takes care his staff by doing the right thing, which none of that happened over the past

Mr. Luna then stated, "things shouldn't of happened the way they did, but we can't change the past, but we can move forward and continue to work together."

I then mentioned, that I really hope the past is forgotten and that we all can work together as a team and not allow personal or professional agendas to interfere with taking care of safety and environmental health issues and the Bureau business.

Mr. Luna replied, "I agree".

June 3, 2003

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Warden Schultz**

On June 3, 2003, at approximately 10:00 a.m., I entered Warden Schultz office to update him on the preparations to welcome the County EPA and State EPA's visitors concerning UNICOR Factory and Warehouse.

After the discussion Warden Schultz informed me, that he brought up my OWCP claim with the Regional Director in a hypothetical manner. He also mentioned, that he didn't bring up anyone's name, like Leroy or Luna. He then stated, that the Regional Director asked is this about Leroy. Warden Schultz stated, yes.

I then asked Warden Schultz, is the Regional Director opposed to the mutual OWCP claim agreement that was drawn up to protect the agency and myself?

Warden Schultz then replied, "the Regional Director mentioned if you (Leroy) go forward with your claim, you will force us to fight against you. Warden Schultz also stated, if you decide not to go forward with your OWCP claim it will be best for you (Leroy) and everyone involved."

I then asked Warden Schultz, I guess the OWCP claim agreement will not be signed by you or anyone else?

Waren Schultz replied, "that's right!"

I then asked Warden Schultz, am I hearing you right, that it won't be in my best interest to continue with my OWCP claim?

Warden Schultz then replied, "Yes".

I mentioned to Warden Schultz, that Regional Director Haro's comments seem threatening to me personally and professionally. I also mentioned to Warden Schultz, that you and the Regional Director (Haro) know that the Institution Executive staff and Central Office staff have created a hostile work environment. I then mentioned to Warden Schultz, that I became very sick overall this, which nobody seemed to care about me or how this affected my family. I finally mentioned to Warden Schultz, that I have a good hostile work environment case, stress claim case, ethic violation case, code of conduct violation case, and probably civil right violation case committed towards me by the institution Executive staff and Central Office Executive staff, which if I pursue I loss professionally and if I don't pursue these issues I lose personally, physically, and professionally.

Warden Schultz then stated, I don't think Mr. Haro threatening you, but I do think his telling you to look at the issues more closely and to see if there really as bad as you perceive them to be.

Attachment 6/17

I then mentioned to Warden Schultz, that what they (Mr. Haro and Warden Schultz) were asking me to do seemed to be very unethical and unprofessional. I then asked Warden Schultz, why does the Regional

code of conduct, work place violence, and hostile working environment have been committed against a staff member, and especially when proper notification has been made by the employee to his immediate supervisor and his CEO, still no actions to conduct an investigation, which would establish credibility of those allegations are not forwarded to the Office of Internal Affairs, which my right to work in a safe, secure, and healthy working environment continues to be violated?

Warden Schultz became quiet and did not respond.

I then asked Warden Schultz, if I drop my OWCP claim and allow the Executive staff misconduct be swept under the carpet, Mr. Haro and yourself stop the Executive staff and the Central Office staff from harassing and retaliating against me?

Warden Schultz replied, I will speak to Luna and Stahley, but I will not speak for the Central Office.

I then asked Warden Schultz, if I agree to all this will I still be able to be promoted to the Executive level within the next year, when I help get us through ACA or will I be put in an unofficial penalty box and remain at USP Atwater for a while?

Warden Schultz replied, "Yes", you will be promoted Leroy, but I don't know anything about a penalty box.

I then asked Warden Schultz, if the Regional Director was upset with me personal or professionally?

Warden Schultz replied, No, Leroy.

I then informed Warden Schultz, that everything I have done concerning the UNICOR Computer Recycling Program was to protect staff and inmate workers Bureau Wide, and to ensure I protected you (Mr. Schultz), Mr. Haro, and the agency from litigation? I also mentioned, that my loyalty to him (Warden Schultz) and Mr. Haro never wavered.

Warden Schultz replied, Mr. Haro and myself are not angry with you, we know things happened that was not in your control and should of been prevented way earlier. Warden Schultz also stated, there is no concern about your loyalty to us or the agency.

I mentioned to Warden Schultz, that I have worked hard to get were I am in my career and that I would not do anything to jeopardize that in anyway, because as we talked earlier I want to take the next step before the end of the year and I hope that can still happen.

Warden Schultz replied, I know it will happen Leroy, but we need to continue to take care of business and relax.

U.S. Department of Justice

Federal Prison System
United States Penitentiary

Office of the Warden

#1 Federal Way, P.O. Box 019000
Atwater, California 95301

May 21, 2003

Valerie Lloyd, Claims Examiner
United States Department Of Labor
Office of Workers Compensation Programs
P.O. Box 8300
London, KY 40742-8300

Dear Mrs. Lloyd:

This letter is in reference to your April 1, 2003 letter to the Agency and Mr. Smith, Claim Number 132072398.

The Agency and Mr. Leroy Smith, have both come to a mutual agreement pertaining to case number 132072398. Mr. Smith has agreed not to pursue this case, without prejudice.

Mr. Smith has requested from the agency that all medical billing associated with this case be paid by the agency, to include future medical cost associated with this claim, in addition Mr. Smith does not give up his right to pursue this case at a later date, should this agreement be breech.

The agency has agreed to pay all medical cost associated with this claim, via the yearly pay back system with the Department of Labor.

The agency has agreed to the terms of this agreement. It is understood that the agency does not accept at fault or blame pertaining to this case.

Paul M. Schultz, Warden

Leroy Smith, Safety Manager

their attention, have a responsibility to review, make a determination as to what incident occurred, and then from that point, based on what their determination is, is to provide documentation up the chain of command. **Q.** And how much time do they have to provide you with the information when there is a verbal confrontation? **A.** If there's a verbal confrontation, I don't believe there's any real time limit. I don't even know if there's a time limit associated with any of the issues. Usually issues of misconduct have to do with the – as they become aware of the incident.

NOTE: Again, I reported physical threats and verbal threats to the executive staff, which Mr. Luna failed to report until three months later according to Mr. Schultz and Mr. Schultz failed to investigate.
(See Attachments 118, 118a, 118b, 118c, 118d, 118e, & 118f) 30. On March 21, 2004, Mr. Schultz stated the following: Elroy did you eat a piece of chicken or a whole chicken, Elroy I bet you ate a whole piece of chicken, come on Elroy you probably could eat a whole chicken, he then gave me a nudge and began to laugh. **(See Attachment 119) 31.** On May 5, 2004, Mr. Schultz stated the following: I said good morning Elroy while walking by you, Elroy do you have a radio, I replied, yes, he said Elroy why don't you take some of the donuts and place them on your radio antenna and eat them in your office.
(See Attachments 120, & 120a) 32. On June 15, 2004, Mr. Booth stated the following: your stock is pretty high right now for all the achievements you've accomplished within the last year, which you wouldn't want to allow any negative perception to prevent you from getting your next promotion. I'm not going to say it will happen to you, but I am not going to say it doesn't happen.
(See Attachments 121, & 121a) 33. On June 16, 2004, I e-mailed Mr. Stahley about my missing medical surveillance file that's maintained in his office safe, which I informed Mr. Booth, Mr. Cole, SIA, Mr. Schultz, Mr. Clements, and Mr. Novicky. On July 28, 2004, Mr. Stahley stated, " Leroy per our phone conversation on Tuesday the 27th, I shredded the last two bags of papers that came out of my safe, I am certain I destroyed your file, no inmates came in contact with the bags I am the only one that shredded the papers. **(122, 122a, 122b, 122c, 122d, 122e, 122f, & 122g) Deposition of Mr. Schultz June 8, 2005,** (Ms. Dryovage) (Page 64) **Q.** And what was your understanding of whether Mr. Sthaley responded to that document request? (Mr. Schultz) **A.** I believe he did respond to them. **Q.** Did he provide the safety records? **A.** Not that I'm aware of. (Page 68) **Q.** Well, are you aware that Mr. Stahley had documents establishing Mr. Smith's personal exposure to toxic metals? **A.** Mr. Smith indicated that he – that Mr. Stahley had documents that were – that belonged to him. **Q.** And your understanding is that Mr. Stahley shredded those documents? **A.** My understanding is that I believe Mr. Stahley's response to Mr. Smith was that he may have or did in fact shred them. That's my only understanding.
34. On June 28, 2004, Mr. Booth stated the following: You need to remember he is the engineer driving this train and he will be the person to either assist you being promoted or not, I think the influencing factor will be how you continue to handle yourself, Warden's have leeway in enforcing policy and running of their institutions, which your opinion and mine don't really matter, but what does matter is that you and I are seen positively in the staff's eyes as supporting the Warden and the Bureau's mission, I really think you need to decide what train you are going to ride and especially ensure that when you walk out of this office, you watch what you say and who you say it too, because depending on how it gets back to the Warden it can be seen as insubordination.
(See Attachments 123, 123a, 123b, & 123c) 35. On July 1, 2004, Mr. Booth stated the following: I would caution you in what ever decision you make, because the wrong decision could come back to hurt you professionally, I hope you just think things through and remember that your actions and comments you make after leaving this office could be misunderstood as insubordination, which won't help your chance of being promoted out of here, I think we both agree that you conduct yourself professionally and perform the duties of a Safety Manager exceptionally well, but some of your decision making seems to be that of an individual and not of management. **(See Attachments 124, 124a, 124b, & 124c)**
36. On July 1, 2004, I made an official report to Mr. Booth (Supervisor) about Mr. Schultz Executive Misconduct towards me, which he failed to report this to Mr. Gunja or OIA. No investigation was

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

June 9, 2003

MEMORANDUM FOR RICHARD T. LUNA, ACTING WARDEN

THRU: **Alan D. Booth, Associate Warden Custody**

FROM: L. A. Smith, Safety Manager

SUBJECT: **Bill Peterson (Hostile Working Environment)**

Per your request the following is submitted. On June 9, 2003, at approximately 1:00 p.m., I received a phone call from Mr. Peterson, Willie, Facilities Manager, concerning my memorandum addressing training issues with Mr. Martin, Louis, Inside General Foreman.

Mr. Peterson mentioned, that my memorandum was addressing issues that I did not know anything about.

I informed Mr. Peterson, that my responses were initiated from the memorandums I received from Mr. Martin previously. I also mentioned, that I only addressed concerns and provided technical advice to Mr. Martin per his request.

Mr. Peterson then mentioned, that his department requested funding from the Regional Office to conduct the lockout/tagout and confined space training, but they denied his request. He also mentioned, that they were informed that the institution Safety Department would provide the training.

I began to respond when Mr. Peterson voice began to elevate in an aggressive (hostile or retaliatory) manner over the phone.

Mr. Peterson stated, "What kind of crap are you meaning by, once again, the Safety Department is asked to bail out the Facilities Department for the lack of attention and direction to comply with your staff's training requirements!"

I replied, that the Safety Department paid the initial lockout/tagout and confined space training for Facilities and we have identified the mandatory annual training requirements for two years through memorandums and central safety committee meeting minutes when Activation Funding was available, which feel on death ears.

I began to speak further when Mr. Peterson voice again began to elevate in an aggressive (i.e., hostile or retaliatory) manner over the phone.

Mr. Peterson then stated, "I don't give a crap what you think!" He also stated, "You need to have your ass beat!"

I asked Mr. Peterson, are you threatening me?

Mr. Peterson then stated, "You can interpret it anyway you want!" He also stated, "You are self centered, cut throat, kiss ass mother fucker!"

I then asked Mr. Peterson, why area you threatening me and being hostile towards me.

I then mentioned, over two years the Safety Department has been patient with his department not being in compliance. I also mentioned, that he informed Mr. Luna and I on several occasions that he was going to have an outside company perform the training, instead of the Safety Department because that's what you have done in the past.

Mr. Peterson then stated, "I don't really give a fuck anymore and your sorry mother fucking ass can kiss my ass, bitch!" Mr. Peterson then slammed the phone down in an aggressive hostile manner.

At approximately 1:10 p.m., I verbally notified Mr. Luna, Acting Warden, of the hostile working environment Mr. Peterson has created towards me. I also mentioned, that I feel physical harm may come to me and that I am formally requesting a staff escort to be assigned to me until this issue has been resolved.

At approximately 1:15 p.m., I tried to notify Mr. Booth, but he was not available. At approximately 3:35 p.m., I verbally notified my supervisor, Mr. Booth, Associate Warden Custody, of the hostile working environment.

have taken if Mr. Smith hadn't documented the problem and gone to the central office?

A. Well, Mr. Smith's job was to bring up any safety issue and he did. And the time period I couldn't recall. I cannot recall the time between the time he found out what the case was and when we took down the barriers.

Q. Do you know if the grills were removed from the serving line?

A. No. There was a door added to the end of the serving line.

Q. So they still haven't done that?

A. As far as I know, they haven't removed it because there is a door at the end of the serving line now that there wasn't there before. Mr. Smith brought it up they had to have a different outlet. We have one in the front and one on the side of each one of the lines.

Q. Now, did Mr. Smith also inform you of the hostile work environment created by Bill Peterson?

A. I don't recall exactly which one it was, but Mr. Smith brought up several allegations about several staff.

Q. And did he inform you that he had a fear of Mr. Peterson's threats of violence and physical

harm could result in physical harm to him?

A. I don't remember the exact words that Mr. Smith used, but I reported it up the line.

Q. And you reported it to?

A. The warden.

Q. And what did the warden do?

A. Again, that's the warden's business.

Q. To your knowledge was Mr. Peterson disciplined?

A. As far as I know, he wasn't. He retired.

Q. And was his retirement in any way connected to his treatment of Mr. Smith?

A. I could not tell you that for sure.

Q. But he was -- he retired a few days after the incident with Mr. Smith?

A. I don't remember -- I don't remember the time frame, no.

Q. You recall that this occurred around June 9th, 2003?

A. No, I don't recall that.

Q. Now, do you recall having a discussion with Mr. Smith on August 3rd, 2004 regarding his concerns about the CRT program?

A. Mr. Smith didn't work for me in August 2004.

25 Q. Now, at some point were you aware that

Mr. Bill Peterson physically threatened and verbally threatened Mr. Smith on June 9th, 2003?

A. I am not really sure exactly what those terms you're referring to mean. I am aware that Mr. Smith and Mr. Peterson had a verbal confrontation.

Q. And did you question Mr. Smith or Mr. Peterson regarding what occurred?

A. I don't believe I questioned either one. I believe it was brought to my attention some months later that it had occurred.

Q. And who brought this information to your attention?

A. I believe it was Mr. Luna.

Q. And did he provide in writing his understanding of what occurred?

A. He did not.

Q. Did Mr. Luna and Mr. Booth give you a memorandum on or about June 9th, 2003?

A. I don't recall June 9th, 2003.

Q. Did you receive any written communication from Mr. Luna or Mr. Booth concerning the verbal confrontation of Mr. Peterson and Mr. Smith?

A. I don't recall receiving any, no.

Q. Now, were you aware that Mr. Smith

A. I don't know.

Q. Was Mr. Luna required by policy to inform you immediately of the verbal confrontation by Bill Peterson on Mr. Smith?

A. I believe managers in the Bureau of Prisons, as these issues are brought to their attention, have the responsibility to review, make a determination as to what incident occurred, and then from that point, based on what their determination is, is to provide documentation up the chain of command.

Q. And how much time do they have to provide you with the information when there is a verbal confrontation?

A. If there's a verbal confrontation, I don't believe there's any real time limit. I don't even know if there's a time limit associated with any of the issues. Usually issues of misconduct have to do with the -- as they become aware of the incident.

Q. And do you know how long after the incident occurred on June 9th, 2003 that Mr. Luna became aware of it?

A. I don't recall, no.

Q. Now, are you aware that Mr. Smith is an employee with a disability?

March 23, 2004

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Warden Schultz**

On March 21, 2004, at approximately 11:00 a.m., I was volunteering my time to clean-up the Atwater Boys and Girls Club with other staff. During this time the boys and girls club staff bought Kentucky Fried Chicken for all volunteers. Shortly after eating lunch Warden Schultz yelled across the common area, Elroy did you eat a piece of chicken or a whole chicken. This was in front of Jesse Gonzalez, Executive Assistant, Joe Moorhead, Captain, Raymond Simmons, Food Service Administrator, and others.

I replied to Warden Schultz, that I had eaten only one piece of chicken, not a whole chicken.

Warden Schultz then nudged Executive Assistant Gonzalez, and stated, Elroy I bet you did eat a whole chicken.

I continued to clean the carpet, when Warden Schultz walked over towards me.

Warden Schultz then stated, come on Elroy you probably could eat a whole chicken.

I replied to Warden Schultz, that I could not eat a whole chicken by myself, but I thought he (Warden Schultz) was walking a fine line.

Warden Schultz gave me a nudge and began to laugh.

I then began to laugh to ensure Warden Schultz did not see his comments were getting underneath my skin.

May 5, 2004

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Conversation with Warden Schultz**

On May 4, 2004, at approximately 7:45 a.m., I was speaking with Mr. Stahley, Associate Warden of Industries, when Warden Schultz walked by. I mentioned good morning to Warden Schultz and he continued to walk by. I then mentioned good morning to Warden Schultz a second and third time before he responded good morning Elroy (i.e. Leroy).

Warden Schultz then stated, I said good morning Elroy while walking by you, which it seemed you may be needing a hearing aid.

I mentioned to Warden Schultz, that I believe my hearing is okay.

Mr. Stahley and I both turned towards each other, Mr. Stahley asked, did you hear the Warden say good morning, I didn't?

I replied, neither did I.

Warden Schultz then asked, Elroy have you had a donut yet?

Mr. Stahley again looked towards me and rolled his eyes back.

I then mentioned to Warden Schultz, the constant donut jokes are like the chicken joke. I then asked Warden Schultz, do you remember the chicken joke you mentioned at the boys and girls club **(Volunteer)**.

Warden Schultz replied, Yes.

I then mentioned to Warden Schultz, that he had asked if I eaten one piece of chicken or a whole chicken. I replied, that I had eaten only one piece of chicken. I then mentioned to Warden Schultz, that if I had eaten a whole chicken I would have been disappointed because I really like eating a whole chicken with chicken legs, which the chicken at the boys and girls club seemed to be missing them, but I could satisfy my hunger if he would accommodate me by dropping his paints and letting me bit into one of his chicken legs.

Warden Schultz then stated, I don't think so! A stern look came over Warden Schultz face, which he also became very quite for the moment.

Warden Schultz then asked, Elroy are you going to eat?

I replied, No.

Warden Schultz then stated, Elroy do you have a radio?

I replied, Yes.

Warden Schultz then stated, Elroy why don't you take four or five donuts and place them on your radio antenna and go back to you office to eat them.

I replied to Warden Schultz, that I really don't like donuts, but I guess I will be living now to get some work done.

Warden Schultz then walked away.

Mr. Stahley then stated, I don't think he (Warden Schultz) liked that comment to well.

I replied to Mr. Stahley, that Warden Schultz constantly makes donut, food comments and always calls me Elroy instead of Leroy. I also mentioned to Mr. Stahley, that it seems Warden Schultz can make joking comments to other's, but he can't receive the same in return.

Mr. Stahley then stated, I know exactly what you mean. Mr. Stahley also mentioned, that Warden Schultz constantly makes him the butt of his jokes all the time, which his (Warden Schultz) jokes to him are more demoralizing, but he takes it because he is (Mr. Schultz) the Warden.

I then stated, that Warden Schultz fat jokes towards me is not right.

Mr. Stahley then stated, you don't have to tell me that. Mr. Stahley then asked, have you mentioned to the boss that you don't like his comments?

I then mentioned to Mr. Stahley, that I informed Warden Schultz at the boys and girls club that he was walking a fine line after the third mention of me eating a whole chicken in front of staff. I then mentioned to Mr. Stahley, if you or I mention anything to Warden Schultz about his negative jokes, he (Warden Schultz) would become offended or butt hurt by us just thinking about addressing this issue. I also mentioned to Mr. Stahley, that Warden Schultz will see me as having thin skin or not a team player, which will directly affect me personally and professionally.

Mr. Stahley then stated, I know what exactly what you mean, that's why I don't say anything to the boss, so I just smile and deal with it.

June 15, 2004

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: L. A. Smith, Safety Manager

SUBJECT: Conversation with Mr. Booth, AW(C)

On June 15, 2004, approximately 3:10 p.m., I spoke with Mr. Booth about a letter I received in the mail by Accent Inc.

I informed Mr. Booth, that Accent Inc. has been requested by my personal health insurance to review my OWCP stress claim to seek reimbursement of medical expenses if warranted.

Mr. Booth asked, is the company looking to for you to pay the medical bills or someone else?

I informed Mr. Booth, that I spoke with a Representative from Accent Inc. and asked the same question. I then informed Mr. Booth, that they are looking for a third party liability or possibly myself to pay some of the medical bills.

Mr. Booth then asked, what is the total cost of the medical bills?

I informed Mr. Booth, that I believe the bills come to about $2,000.00.

Mr. Booth then stated, well that's a lot of money to have you pay out of your own pocket.

I informed Mr. Booth, about my conversation I had with Warden Schultz pertaining to my OWCP stress claim a few months back.

I then informed Mr. Booth, Warden Schultz informed me, that Mr. Haro instructed him to tell me, that if I continue to go forward with my claim, that I would force them to fight against me, which I took that as a threat to me personally and professionally.

Mr. Booth then mentioned, that he was not privileged to that conversation, but it would be hard to believe a Regional Director would make a bold statement like that.

I informed Mr. Booth, that it did happen and that's why I dropped my stress claim. I then informed Mr. Booth, that I told Warden Schultz, that by dropping my stress claim would cause me to be liable for any medical bills generated, I would reinstate my OWCP claim or request for the Agency to pay for it.

Mr. Booth replied, that would be the reasonable thing to do, but I can't speak for Warden Schultz. Mr. Booth then stated, I think you owe it to the Warden to make him aware of your situation before you make any decisions.

I informed Mr. Booth, that I don't owe Warden Schultz anything. I then informed Mr. Booth, that I don't owe Warden Schultz or any other Executive staff anything, but I will inform him of my current situation.

Mr. Booth then stated, I do believe you owe it to Warden Schultz, because he is the Warden.

I then informed Mr. Booth, that my owing and being tolerant towards the Executive staff has gone, because if anyone should be owed anything that person should be me and Mr. Rodriguez, Safety Specialist for all the abuse we have gone through for enforcing the Safety and Health Program, which both Warden's have done nothing, but to coverup reported assaults and hostile work environment complaints by me to protect the Executive staff.

Mr. Booth then stated, owe or inform what ever you want to call it, you should you speak with the Warden.

Mr. Booth also stated, your stock is pretty high right now for all the achievements you've accomplished within the last year, which you wouldn't want to allow any negative perception to prevent you from getting your next promotion.

I informed Mr. Booth, that I wouldn't have expected him to make a comment like that. I then informed Mr. Booth, that I have always been taking care of the Bureau's business.

Mr. Booth then stated, you have done an exceptional job for me and I know your going to continue, because that's the type of professional you are.

I then asked Mr. Booth, why when a good employee asks questions or does his job according to policy and the law, which affects Executive staff's personal or professional agendas, they always threaten the employee with perception or place you in a unofficial penalty box.

Mr. Booth replied, I not going to say it will happen to you, but I am not going to say it doesn't happen.

I finally informed Mr. Booth, it's funny how staff careers are affected by simply performing their duties and in my case, retaliated, harassed, coerced, for ensuring the Safety and Health of staff and inmate workers.

From: Leroy Smith
To: Stahley, Tom
Subject: Medical Survalliance File

Tom, On June 16, 2004, I spoke with you pertaining to the location of my medical surveillance file. I would like to request that a thorough search be conducted to locate my Medical Surveillance File, which was to be maintained in your office safe. This file contains my personal and medical information which is protected by Law and Bureau Policy. If this information falls in the wrong hands my personal, professional, and financial information maybe compromised and maybe used in illegal activities.

You may want to question anyone who may have access to these files to find out if they may know the location of this misplaced medical surveillance file. If you do not have the medical file please indicate why it is not available or specify why it cannot be found.

I greatly appreciate your cooperation on resolving the matter. If there are any questions, please do not hesitate to let me know.

CC: Booth, Alan; Cole, Carroll; Schultz, Paul

Mail Envelope Properties (40F565C3.1F6 : 13 : 12678)

Subject:	Medical Survalliance File
Creation Date	7/14/2004 9:56:35 AM
From:	Leroy Smith
Created By:	lxxxsmith@bop.gov

Recipients	**Action**	**Date & Time**
bop.gov		
ATWADM1.ATWDOM1	Delivered	7/14/2004 9:56:35 AM
ATW1910 CC (Paul Schultz)	Opened	7/14/2004 10:13:44 AM
ATW5889 CC (Carroll Cole)	Opened	7/16/2004 8:06:34 AM
ATW6663 CC (Alan Booth)	Opened	7/14/2004 10:29:55 AM
central.unicor.gov		
AR_PO.LOSD	Delivered	7/14/2004 9:57:13 AM
tom (Tom Stahley)	Opened	7/19/2004 7:34:00 AM

Post Office	**Delivered**	**Route**
ATWADM1.ATWDOM1	7/14/2004 9:56:35 AM	bop.gov
AR_PO.LOSD	7/14/2004 9:57:13 AM	central.unicor.gov

Files	**Size**	**Date & Time**
MESSAGE	1386	7/14/2004 9:56:35 AM

Options

Auto Delete:	No
Expiration Date:	None
Notify Recipients:	Yes
Priority:	Standard
ReplyRequested:	No
Return Notification:	None
Concealed Subject:	No
Security:	Standard

From: Leroy Smith
To: Stahley, Tom
Subject: Re: Medical Survalliance File

Per your voice mail I received on July 19, 2004, at approximately 7:30 a.m., which you indicate that you don't remember seeing my medical file in your safe. You then state, that you recall only seeing your staff files, but you will continue to look for my file in the meantime. You also state, that all the files were accounted for when you turned the custody of the safe over to Ms. Aragon.

On June 16, 2004, you told Ms. Aragon and I that my file was in the safe. You then stated, that you and I both were aware of this. My OWCP document which had been two hole punched was laying on the top of all the other staff files, which was in my file. You have not officially turned over the contents in the safe to Ms. Aragon, which if this security procedure would of taken place it may have resolved this issue. This file contains my personal and medical information which is protected by Law and Bureau Policy. A correct answer to this issue, is a step in the right direction which sets a person free.

I greatly appreciate your cooperation on resolving the matter. If there are any questions, please do not hesitate to let me know.

>>> Tom Stahley 7/19/2004 7:34:11 AM >>>
Leroy,per our call on July the 19th,I will look for your file

>>> Leroy Smith 7/14/2004 9:56:35 AM >>>
Tom, On June 16, 2004, I spoke with you pertaining to the location of my medical surveillance file. I would like to request that a thorough search be conducted to locate my Medical Surveillance File, which was to be maintained in your office safe. This file contains my personal and medical information which is protected by Law and Bureau Policy. If this information falls in the wrong hands my personal, professional, and financial information maybe compromised and maybe used in illegal activities.

You may want to question anyone who may have access to these files to find out if they may know the location of this misplaced medical surveillance file. If you do not have the medical file please indicate why it is not available or specify why it cannot be found.

I greatly appreciate your cooperation on resolving the matter. If there are any questions, please do not hesitate to let me know.

CC: Aragon, Janice; Booth, Alan; Clements, John; Novicky, Larry

Mail Envelope Properties (40FBE8D4.49C : 13 : 12678)

Subject: Re: Medical Survalliance File
Creation Date 7/19/2004 8:29:24 AM
From: Leroy Smith

Created By: lxxxsmith@bop.gov

Recipients	**Action**	**Date & Time**
bop.gov ATWADM1.ATWDOM1 AM	Delivered	7/19/2004 8:29:24
ATW6663 CC (Alan Booth) AM	Opened	7/19/2004 8:32:33
bop.gov WXR_ADM1.WXR_DOM1 AM	Delivered	7/19/2004 8:29:52
WXR5719 CC (John Clements)		
central.unicor.gov COPO.GWPD AM	Delivered	7/19/2004 8:32:59
lnovicky CC (Larry Novicky) AM	Opened	7/19/2004 8:45:15
central.unicor.gov AR_PO.LOSD AM	Delivered	7/19/2004 8:30:09
jaragon CC (Janice Aragon) AM	Opened	7/19/2004 9:20:25
tom (Tom Stahley) AM	Opened	7/19/2004 11:54:15

Post Office	**Delivered**	**Route**
ATWADM1.ATWDOM1	7/19/2004 8:29:24 AM	bop.gov
WXR_ADM1.WXR_DOM1	7/19/2004 8:29:52 AM	bop.gov
COPO.GWPD	7/19/2004 8:32:59 AM central.unicor.gov	
AR_PO.LOSD	7/19/2004 8:30:09 AM central.unicor.gov	

Files	**Size**	**Date & Time**
MESSAGE	2935	7/19/2004 8:29:24 AM

Attachment #1226

From: Tom Stahley
To: Smith, Leroy
Date: 7/28/2004 6:58:31 AM
Subject: Re: Medical Survalliance File

Leroy per our phone conversation on Tuesday the 27th,I sherreded the last two bags of papers that came out of my safe,I am sertain I destroyed your file,no inmates came in contact with the bags I am the only
one that sherreded the papers.

>>> Leroy Smith 7/19/2004 8:29:24 AM >>>
Per your voice mail I received on July 19, 2004, at approximately 7:30 a.m., which you indicate that you don't remember seeing my medical file in your safe. You then state, that you recall only seeing your staff files, but you will continue to look for my file in the meantime. You also state, that all the files were accounted for when you turned the custody of the safe over to Ms. Aragon.

On June 16, 2004, you told Ms. Aragon and I that my file was in the safe. You then stated, that you and I both were aware of this. My OWCP document which had been two hole punched was laying on the top of all the other staff files, which was in my file. You have not officially turned over the contents in the safe to Ms. Aragon, which if this security procedure would of taken place it may have resolved this issue. This file contains my personal and medical information which is protected by Law and Bureau Policy. A correct answer to this issue, is a step in the right direction which sets a person free.

I greatly appreciate your cooperation on resolving the matter. If there are any questions, please do not hesitate to let me know.

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You may want to question anyone who may have access to these files to find out if they may know the location of this misplaced medical surveillance file. If you do not have the medical file please indicate why it is not available or specify why it cannot be found.

I greatly appreciate your cooperation on resolving the matter. If there are any questions, please do not hesitate to let me know.

Mail Envelope Properties (4107B0FF.C75 : 16 : 40826)

Subject: Re: Medical Survalliance File
Creation Date 7/28/2004 6:58:23 AM
From: Tom Stahley

Created By: GWPD:tom@LOSD.AR_PO

Recipients
bop.gov
ATWADM1.ATWDOM1
ATW3409 (Leroy Smith)

Post Office	Route
ATWADM1.ATWDOM1	bop.gov

Files	Size	Date & Time
MESSAGE	3366	7/28/2004 6:58:23 AM

Options
Expiration Date: None
Priority: Standard
ReplyRequested: No
Return Notification: None

Concealed Subject: No
Security: Standard

Junk Mail Handling Evaluation Results
Message is not eligible for Junk Mail handling
Message is from an internal sender

Junk Mail settings when this message was delivered
Junk Mail handling disabled by User
Junk List is not enabled
Junk Mail using personal address books is not enabled
Block List is not enabled

Q. Now, during the same period, 2002 to 2004, did it come to your attention that safety records were being placed in the shredder by Atwater managers?

A. I believe Mr. Smith had made a request for documents to Mr. Stahley.

Q. And what was your understanding of whether Mr. Stahley responded to that document request?

A. I believe he did respond to them.

Q. Did he provide the safety records?

A. Not that I'm aware of.

Q. And is the reason why he did not provide the safety records is that he put them through the shredder?

A. I belief his response, whether it was to Mr. Smith or myself, I believe his response was he

A. He is -- my understanding is he's always been an employee of UNICOR. His -- yeah, he's always been an employee of UNICOR. When he was the associate warden, he was employed by UNICOR.

Q. And what was the reason why he shredded documents when he moved from one position to another?

A. I believe I've already answered that. I don't know. Maybe he didn't want to carry it all out there. I --

Q. Did you understand that these documents were critical evidence in terms of establishing noncompliance with the OSHA and EPA regulations?

MR. BAUCH: Objection for the foundation for the question. The witness has previously testified that he had no knowledge as to the exact content of those documents. So to characterize it as crucial evidence would be improper foundation for this witness.

MS. DRYOVAGE: You can answer.

THE WITNESS: I'm not aware of what the documents were.

BY MS. DRYOVAGE:

Q. Well, are you aware that Mr. Stahley had documents establishing Mr. Smith's personal exposure to toxic metals?

A. Mr. Smith indicated that he -- that Mr. Stahley had documents that were -- that belonged to him.

Q. And your understanding is that Mr. Stahley shredded those documents?

A. My understanding is that I believe Mr. Stahley's response to Mr. Smith was that he may have or did in fact shred them. That's my only understanding.

June 28, 2004

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: L. A. Smith, Safety Manager

SUBJECT: Conversation with Mr. Booth, AW(C)

On June 28, 2004, approximately 10:00 a.m., We continued our conversation in Mr. Booth's office. I informed Mr. Booth, that Warden Schultz authorized me to be present during Mr. Rodriguez's OWCP Appeal Hearing. I also informed Mr. Booth, that Warden Schultz only seem hesitant on the issue of having Mr. Porter present during the hearing and that he would speak with the Executive staff and get back with me.

Mr. Booth replied, I don't know what to tell you Leroy.

I then gave Mr. Booth a copy of Mr. Wong's, Regional Council, response, which he mentions that it's fine for me to speak as a fact witness not an expert opinion type testimony.

Mr. Booth then states, I guess he (Warden Schultz) changed his mind.

I informed Mr. Booth, that Warden Schultz change of heart is directly based off the conversation we had about his offensive comments towards me last Thursday.

Mr. Booth replied, I don't think Warden Schultz would take your conversation with him personally, I believe that there must be some other factors we don't know about, which changed his mind.

I informed Mr. Booth, that Warden Schultz comments were offensive, demeaning, and discriminatory at best, which now his retaliating towards me for standing up for myself, which is direct reprisal for putting him on notice.

Mr. Booth replied, I think you need to remember that he is the boss and that you should be thankful that he allowed you to express your concerns with him.

I informed Mr. Booth, that I spoke to the Warden for two reason's, 1) because he (Mr. Booth) recommended for me to speak with Warden Shultz about his (Warden) previous offensive comments and 2) make sure Warden Schultz is aware that his comments have offended me and that I wish them to stop according to policy.

Mr. Booth replied, I am glad you took my advise and now it's time to move forward and let it go. Mr. Booth then stated, I think Warden Schultz now knows his comments have offended you and whether he stops or not will be left up to him.

Mr. Booth then stated, you need to remember he (Warden) is the engineer driving this train and he will be the person to either assist you being promoted or not. Mr. Booth then stated, I think the influencing factor will be how you continue to handle yourself.

I informed Mr. Booth, that I have always been professional and that I have been forced to tolerate harassment, retaliation, coercion, physical assault, and may other hostile work environment conditions for enforcing the Safety and Environmental Health Program for over three years, because I fear reprisal towards me personally and professionally.

Mr. Booth then stated, you need to decide what path you are going to follow, the Warden's or your own, which will help decide your future.

I informed Mr. Booth, that I have always followed Warden Schultz directions, but how much does a person have to continue to endure before someone steps up to the plate and makes it all stop.

Mr. Booth replied, I think only Warden Schultz has the power to stop his actions or anyone else for the matter.

I then asked Mr. Booth, if I have violated code of conduct, ethics, or been insubordinate to any member of the Executive staff why haven't I received negative log entries or received disciplinary action?

Mr. Booth replied, I can't speak for Warden Schultz or any of the other Executive staff, but I can say that you have been a great asset to the Agency's Mission and to me personally.

I then informed Mr. Booth, that I can answer the questions, which is that I have not done anything wrong except enforce the safety and environmental health program and report work place violence, which the Executive staff have failed to protect me under the law.

Mr. Booth again stated, I can't speak on behalf of Warden Schultz and the other Executive staff, but I will say this, they must of had their reasons for not requesting an investigation.

I informed Mr. Booth, that the Executive staff are enforcing code of conduct, ethics, and work place violence issues every day when it's caused by Department Heads and Line staff, but Executive staff are not held to the same standards.

Mr. Booth then replied, that Warden's have leeway in enforcing policy and running of their institutions, which your opinion and mine don't really matter, but what does matter is that you and I are seen positively in the staff's eyes as supporting the Warden and the Bureau's mission.

I informed Mr. Booth, that it's hard to follow somebody who has allowed staff and executive staff commit serious violation of misconduct, ethics, and work place violence towards me without taking any action to correct or discipline anyone for their actions.

Mr. Booth replied, I wasn't here to see all the allegations you have expressed to me, but the Warden makes decisions everyday that staff like and dislike.

I then informed Mr. Booth, that some of the work place violence and executive staff misconduct issue towards me have occurred during his tenure.

Mr. Booth then stated, I really think you need to decided what train you are going ride and especially ensure that when you walk out of this office, you watch what you say and who you say it too, because depending on how it gets back to the Warden it can be seen as insubordination.

I then informed Mr. Booth, I can be written up for insubordination for talking to staff, but the executive staff can't be written up or disciplined for work place violence. I also informed Mr. Booth, that all of his comments of perception, riding the right train, future, assist you being promoted or not, and speaking with staff can be seen as insubordination, seems to me as intimidation tactics, coerce, and threats towards my future promotion growth.

Mr. Booth replied, I am trying to guide you and provide you the best advise I can to help you make the right career path, which will help you get out of USP Atwater.

I then replied to Mr. Booth, I see the writing on the wall, but I can't guarantee I won't go forward and file on Warden Schultz. I will guarantee you that I will continue to conduct myself professionally and support the mission of the institution.

Mr. Booth then stated, I know you will continue to be professional, but I still advise you to use caution in who you speak with and what you talk about with them.

I informed Mr. Booth, that I get the message loud and clear.

I replied to Mr. Booth, I think your comments have been very enlightening and I am sure that I will come up with the proper solution which will make everyone very happy.

Mr. Booth then stated, I hope you have a good vacation and not worry about anything at work, Phil and I will handle everything.

July 01, 2004

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: L. A. Smith, Safety Manager

SUBJECT: Conversation with Mr. Booth, AW(C)

On July 01, 2004, approximately 3:40 p.m., while in Mr. Booth's office he informed me, that he had spoken with Warden Schultz about my concerns of being called Elroy and some of the fat jokes.

I asked Mr. Booth, I thought you were not going to get involved and that I needed to handle any issues I may have with the Warden Schultz on my own?

Mr. Booth replied, I did say that, but I thought since the conversation you had with Warden Schultz last week that I might need to get involved and ensure everything has been worked out with both of you.

Mr. Booth then asked, did Jesse (Executive Assistant) speak with you about why they call you Elroy?

I replied to Mr. Booth, No.

I then asked Mr. Booth, why would Jesse need to speak with me about them calling me Elroy?

Mr. Booth then stated, that Warden Schultz informed him that during ACA the Executive staff wanted to place you in charge of the ACA Committee and Warden Schultz disagreed with them.

Mr. Booth also stated, that Jesse then turned to Warden Schultz and asked, why wouldn't we have Elroy spearhead the committee because most of the mandatory files directly affect safety.

Mr. Booth then stated, that Warden Schultz then said my boy Elroy will not be held responsible for the ACA Accreditation on his own, the ACA Accreditation is everyone's responsibility.

Mr. Booth finally stated, that Warden Schultz informed him that the name Elroy came from the Jetsons cartoon.

I informed Mr. Booth, that this seems to be away out for Warden Schultz, no harm, no fail. I also informed Mr. Booth, that Warden Schultz explanation or meaning for calling me Elroy, seems to be very familiar to my wife's definition that I mentioned to him a couple of weeks ago.

Mr. Booth then stated, isn't that funny.

I then informed Mr. Booth, that I think you went to speak with Warden Schultz to tell him that I wasn't to happy with his jokes and calling me Elroy and that I was still undecided about making a written formal complaint after our conversation on Monday.

Mr. Booth then stated, you can take this conversation anyway you want, but the point is that I went to speak with Warden Schultz to ensure he understood where you were coming from and that all you were looking for was a clear explanation for his comments.

I then informed Mr. Booth, that I will look at my options and make a decision on what action I will take towards Warden Schultz if any.

Mr. Booth then stated, I would caution you in what ever decision you make, because the wrong decision could come back to hurt you professionally.

I then informed Mr. Booth, any backlash from any decision I make from here on out, could not be any worse then the Executive staff's comments, harassment, retaliation, coercion, and work place violence that I have been subjected to over the past 2 ½ years.

Mr. Booth then stated, I hope you just think things through and remember that your actions and comments you make after leaving this office could be misunderstood as insubordination, which won't help your chance of being promoted out of her.

I then informed Mr. Booth, that threats and intimidation tactics haven't forced me into a corner yet and I will not lay down because it's the politically correct thing to do.

I also informed Mr. Booth, that I will continue to direct and enforce the safety and health program and that I will ensure the safety of all staff and inmate workers, with or without the support of the Executive staff.

Mr. Booth then stated, I think we both agree that you conduct yourself professionally and perform the duties of Safety Manager exceptionally well, but some of your decision making seems to be that of an individual and not of management.

I then replied to Mr. Booth, I think it takes someone with integrity and honor to stand for what is right, even if that means committing political suicide.

Mr. Booth then stated, I can see that I am not getting through to you at this time, I hope that you have listened to what I have had to say and that you clearly look at all your options before making any hasty decisions.

I replied to Mr. Booth, I think your comments have been very enlightening and I am sure that I will come up with the proper solution which will make everyone very happy.

Mr. Booth then stated, I hope you have a good vacation and not worry about anything at work, Phil and I will handle everything.

conducted. **(See Attachment 125) 37.** On August 3, 2004, Mr. Schultz stated the following: how's your wife doing Leroy, I asked Warden Schultz, what does my wife have to do with this conversation, he again asked how's your wife doing, well she must be happier then she was working down in education, then asked Luna does your wife work, Mr. Luna replied, No, see Leroy you have one up on both us, your wife works and she's happy doing her job, which should make everything very happy on the home front, I felt her being moved over to Health Services was to cover up or make right Mr. Chavez's inappropriate comments, which when she showed interest in the new art class and wiliness to help implement the art program Mr. Chavez shot her down, she brought to Mr. Chavez's attention that she had an art tape that would be perfect for the class, which Mr. Chavez asked her why she was so interested in helping and if she was willing to bring this tape in for inmates, what else are you welling to do for inmates Ms. Smith, he then mentioned I guess it was good for your wife to move over to Health Services, I guess the change of position for her was a good one, because it got her away from Mr. Stahley and Mr. Chavez's supervision or lack of, but I know she had to feel ostracized like I did when you removed my department from Operations and placed us under Custody, Ms. Pagan and Ms. T. Smith informed Mr. Schultz of this incident, which no investigation was conducted nor forwarded to OIA.

(See Attachments 84, 84a, 84b, 84c, 84d, 84e, 84f, & 84g) 38. On September 10, 2004, I was falsely accused of disobeying or not following a direct order to remain in the institution, which conflicted with Bureau policy and Emergency Fire Plan procedures. There was an power outage which effected Custody for Security and Safety for Life Safety. Mr. Garcia informed staff, that Mr. Booth did not want anyone to leave the institution, he never once mention for all staff to report to the staff lounge.During this discussion with Mr. Ray Garcia, Acting Captain, I requested three times to speak with him in a separate office to inform him of my requirements during a power outage, fire alarms, smoke detector alarms, emergency exit sign failure, and emergency lighting failure, which he denied my request. We both became heated and made comments not appropriate for the setting we were currently in, but Mr. Garcia stepped towards me and stood approximately two (2) inches from face to face. I first requested Mr. Garcia to back away from me which he refused, which I felt very threatened. **1. Deposition of Mr. Booth, April 11, 2005,** (Mary Dryovage) (Page 50) **Q.** Did Mr. Smith come to you to get approval to leave the institution during the power outage due to health and safety concerns that were within Mr. Smith's position description and responsibility? (Mr. Booth) **A.** Yes. **Q.** And you approved his leaving the facility? **A.** Yes. **2. Deposition of Mr. Schultz June 8, 2005,** (Mary Dryovage) (Page 16) **Q .** And do you know whether or not Mr. Smith went to either Mr. Booth or some other manager at Atwater to obtain permission to leave the prison during the emergency? (Mr. Schultz) **A.** My recollection is that he did after the fact. **Q.** Before–after he left the building or before? (Page 17) **A.** After he debated the issue with Mr. Garcia. **Q.** So just so the record is clear, it's your understanding that after Mr. Garcia told Mr. Smith no to leave the building, Mr. Smith discussed this with his supervisors and got authorization to leave the Building? **A.** That's Correct. (Page 19) **Q.** Do you understand what the reason why Mr. Smith needed to leave the facility was? **A.** I don't know if I understand is appropriate. I know why Mr. Booth approved him to go to the power house. **Q.** And why was that? **A.** Because there are obviously some safety issues that are related to a power outage at an institution.

(See Attachments 126, 126a, 126b, & 126c)

NOTE: For four (4) years I reported employee misconduct, unprofessional conduct, threats, abusive language, retaliation, and hostile work environment etc., the executive staff don't conduct investigations nor report these allegation to the Office of Internal Affairs (OIA). **1.** I'll quote Mr. Schultz, "After he debated the issue with Mr. Garcia.", no confrontation, abuse language, physical threats, or verbal threats etc., which the executive staff immediately react, request memorandums, begin an investigation, and forward the incident to OIA. This investigation was returned to the Institution by OIA to investigate the incident at the institution level. **2.** The executive staff not once mention Mr. Garcia's threatening

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary
Atwater, California 95301

July 1, 2004

MEMORANDUM TO ALAN D. BOOTH, ASSOCIATE WARDEN

FROM: **L. A. Smith, Safety Manager**

SUBJECT: **Executive Misconduct and Warden Schultz**

I spoke with you on several occasions about the continued Executive staff misconduct towards me, which you have failed to report. You have told me on several occasions if it's not in writing then it never happened. You yourself have made comments that would fall under intimidation, retaliation, harassment, or coercion, but I still believe you will eventually make the right decision and report my allegations through the Office of Internal Affairs to be investigated.

I have informed you of Warden Schultz calling me Elroy, Demeaning Jokes, and most recently his Discriminatory Comments about my physical and mental disability, which you tell me his actions are acceptable because his the Warden. I don't believe Bureau Policies and Federal Laws were written to allow those at the Executive level to be exempt from enforcing and following the standards themselves.

You know the retaliation and harassment towards me is directly related to enforcing the Bureau's Safety and Environmental Health Program, addressing Safety and Environmental concerns with the UNICOR Computer Recycling Program, and continuing to report Executive staff misconduct, which continues to fall on deaf ears.

I plea that you will sole search and make the right decision to report my allegations of Executive staff misconduct, retaliation, harassment, and hostile work environment before I am forced to go outside the Agency for help.

If there is any further information needed, please do not hesitate to let me know.

Attachment #125

A. No, because that matter has not been investigated. It's not got to the conclusion of the investigation.

Q. And does Mr. Smith report to Mr. Garcia?

A. Only in emergencies.

Q. So Mr. Garcia is not his superior?

A. Not on a day-to-day basis. Only in emergencies. We had an emergency and he failed to follow the instruction of Mr. Garcia is the basis of the issue for the investigation. There was some conflict between him and Garcia on September the 10th, if that's the day of the power outage, and that's the basis for the investigation. Mr. Garcia gave a direct order. Mr. Smith did not follow it for reasons that Mr. Smith had, and that's why the matter is currently still pending investigation until Mr. Smith's return.

Q. Did Mr. Smith come to you to get approval to leave the institution during that power outage due to health and safety concerns that were within Mr. Smith's position description and responsibility?

A. Yes.

Q. And you approved his leaving the

facility?

A. Yes.

Q. And Mr. Garcia felt that he should not leave the facility?

A. The matter's being investigated. I'm not going to get into who thought what.

attachment #126

Q. And what was your understanding of what occurred?

A. That during an institution emergency there was an argument between Mr. Smith and Mr. Garcia regarding response.

Q. And was anything specific said about what Mr. Smith did?

A. In the memos, I'm sure there were some specific things said in the memorandums.

Q. And what do you recall was mentioned in the memos that you feel is unprofessional?

A. That he disobeyed the order of Mr. Garcia who was the acting captain at the time during an emergency.

Q. And what was the order that Mr. Garcia gave Mr. Smith?

A. That all of the staff were to report to the visiting room, I believe.

Q. And who was Mr. Smith's supervisor at that time?

A. Would have been Alan Booth, I believe.

Q. And do you know whether or not Mr. Smith went to either Mr. Booth or some other manager at Atwater to obtain permission to leave the prison during that emergency?

Attachment #136a

A. My recollection is that he did after the fact.

Q. Before -- after he left the building or before?

A. After he debated the issue with Mr. Garcia.

Q. So just so the record is clear, it's your understanding that after Mr. Garcia told Mr. Smith not to leave the building, Mr. Smith discussed this with his supervisor and got authorization to leave the building?

A. That's correct.

Q. And was there anything unprofessional about the way that Mr. Smith handled that situation?

A. Which situation?

Q. Telling his supervisor what the situation was and getting authorization before leaving the building.

A. My recollection is is I believe Mr. Garcia told him he needed to do that.

Q. And my question is whether or not there was anything unprofessional on Mr. Smith's part.

MR. BAUCH: Objection for vague. The witness has already indicated that there's -- to you that there's two different parts to that, and your

Q. And so you're not aware of any other responsibilities that he has other than following orders?

A. Generally all of our staff are directed to follow orders during institution emergencies.

Q. Now, do you know why Mr. Garcia ordered that he go to the visiting room?

A. Yes. Generally when we have an institution emergency, all staff would report to the visiting room so they could then be given instruction as to what they were to do or how they would respond to the emergency.

Q. Do you understand what the reason why Mr. Smith needed to leave the facility was?

A. I don't know if understand is appropriate. I know why Mr. Booth approved him to go to the power house.

Q. And why was that?

A. Because there are obviously some safety issues that are related to a power outage at an institution.

Q. And after reviewing -- well, when did you review the documents of what occurred in that incident?

A. It was within the next day or within the

actions. Mr. Garcia stepped towards me in a threatening manner approximately two inches from touching me, which I requested three time for him to back away from me and he refused to comply.

Retaliation for filing OSC, EEO, complaints and IRA MSPB appeal:

1. On October 29, 2004, Mr. Gonzalez (Supervisor) lost the initial medical prognosis and diagnosis, which almost thirty (30) days later he denies me sick leave because he missed place the medical reports. **(See Attachment 127, & 127a) 2.** On November 1, 2004, Mr. Gonzalez approves Family and medical leave until I provide new medical reports from my physician, which on November 4, 2004, he denies my FMLA request, then allows me to use sick leave, and then threatens to place me on Absent Without Approved Leave (AWOL) status. **(See Attachments 128, 128a, 128b, 128c, 128d, 128e, & 128f) 3.** On November 10, 2004, Mr. Gonzalez refused to sign acknowledgment receipt of the new medical reports, I requested regular sick leave then FMLA, he kept me on FMLA from November 9 thru December 31 2004 and signed the sick leave slip on November 23, 2004. **(See Attachments 129, 129a, 129b, 129c, 129d, & 129e) 4.** On November 12, 2004, I notify Mr. Gunja by e-mail requesting to hold a meeting in the Regional Office to work out current issues at USP Atwater, I receive a phone call from Mr. Gonzalez telling that Mr. Gunja will not be meeting with me. **(See Attachments 130, 130a, & 130b) 5.** On November 23, 2004, Mr. Schultz stated the following: he mentioned to Ms. T. Smith that he had tried to e-mail me with no success and that he had responded to a couple of questions I had written him about, he then asked her come to his office to pickup the envelops and deliver them to me, which on envelope carried an e-mail informing that Larrie Lee, OIA Agent was attempting to contact me, the second envelop carried my sick leave slip, I then checked my e-mail on AOL and received the exact e-mail from Mr. Schultz, I requested for data/information and an ethical conflict of interest. **(See Attachments 131, 131a, 131b, 131c, 131d, 131e, 131f, 131g, 131h, & 31i) 6.** On March 7, 2005, Mr. Gonzalez, requested me to substantiate my illness, when during the OIA investigation and OSHA inspection a medical slip was acceptable, the letter contains actions taken of denial of sick leave, annual leave, and carried on Absent Without Approved Leave (AWOL) status. **(See Attachment 132) 7.** On March 10, 2004, Mr. Gonzalez, requested me to submit to an physical examination, the letter requested me to appear for a fitness for duty physical, the letter contains threat of disciplinary action up to and including removal. **(See Attachment 132, & 132a) 8.** On March 16, 2005, Mr. Gonzalez, requested me to appear for a fitness for duty physical, the letter contains a threat of disciplinary action up to and including removal. **(See Attachment 133)**

Conclusion Response:

The OIA investigation report can't conclude there was insufficient evidence to substantiate my allegations without interviewing me or anyone else that would of supported my allegations. Also, OIA was provided original Bureau and Personal correspondence for the last three (3) years, which supports my allegations. Federal Prison Industries and Bureau of Prisons can't seem to produce any real correspondence to even support their answers, which I continue to provide correspondence that clearly disputes the OIA investigation report.

According to Law, Rule, Regulation, and Bureau Policy I have reported the following:

1. Executive staff Misconduct
2. Unprofessional Conduct
3. Work Place Violence
4. Physical Assault
5. Threats
6. Profane, Obscene, or Abusive Language

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary

OFFICE OF THE EXECUTIVE ASSISTANT (LOU)

1 FEDERAL WAY
ATWATER, CA 95301

October 29, 2004

Leroy Smith
Safety Manager
United States Penitentiary
Atwater, CA 95301

Dear Mr. Smith:

You have been on sick leave since October 6, 2006. Before further sick leave can be approved, you must substantiate your illness. The medical slips that you submitted do not provide management with the reason you are off work. Without medical substantiation, further requests for sick leave will not be approved.

You can substantiate your illness by either seeing the institution physician or providing documentation from your personal physician, or both. You are not, however, required to see either of these physicians.

If you decide to see our institution physician, a medical examination has been scheduled for you on November 3, 2004, at 10:30 a.m., at the Federal Prison Camp, Atwater, CA. Our physician will evaluate your condition and ability to safely perform the essential duties required for your position. The institution will pay for this examination.

If you decide to provide documentation from your personal physician, the institution will pay, with prior notification, for any examination that may be necessary to provide this assessment. The institution will not pay for procedures, such as, x-rays, ultra sound, MRI or Catscans. The information must be on your physician's letterhead and signed by your physician. Enclosed is a copy of your position description for your physician's use. If you need additional time to provide this information, please let me know. The following information is acceptable, provided it is submitted by November 10, 2004:

1) assessment of the current clinical status and plans for future treatment,

2) diagnosis,

3) an estimate of the expected date of a full or partial recovery,

4) an explanation of the impact of the medical condition on life activities both on and off the job,

5) a narrative explanation of the medical basis for any conclusion that the medical condition has or has not become static or well-stabilized,

6) a narrative explanation of the medical basis for any conclusion which indicates the likelihood that you are or are not expected to experience sudden or subtle incapacitation as a result of the medical condition,

7) a narrative explanation of the medical basis for any conclusion that duty restrictions or accommodations are or are not warranted, and if they are, an explanation of their therapeutic or risk-avoiding value and the nature of any similar restrictions or accommodations recommended for non-work-related activities,

8) a narrative explanation of the medical basis for any conclusion which indicates the likelihood that you are or are not expected to suffer injury or harm by carrying out, with or without accommodation, safely, the tasks or essential functions of your position.

Please contact me if you have questions about this letter.

Sincerely,

Jesus W. Gonzalez
Executive Assistant

Enclosure: Position Description
Physical Requirements

I have received the original and one copy of this letter with enclosure.

Signature _____ Date _____

U.S. Department of Justice

Federal of Bureau Prisons

Office of the Executive Assistant *Atwater, California 95301*

November 4, 2004

MEMORANDUM FOR LEROY SMITH, SAFETY MANAGER

FROM: Jesse Gonzalez, Executive Assistant

SUBJECT: Response to E-mail

This memorandum is in response to your e-mail, dated November 2, 2004, regarding Additional Medical Information. In this memorandum, you have addressed several issues.

1. On October 6, 2004, you did provide me a copy of a medical slip, however, you did not provide me with three Physician Reports providing diagnosis and prognosis to warrant your need to be on sick-leave status. You may have provided them to Mr. Rodriguez who handles Workman's Compensation issues, but you did not provide them to me.

2. I have not provided any medical information to Mr. Porter or Mr. Booth. I did provide the medical slips to Mr. Porter, but only to determine if they met required standards, because they indicated you were totally incapacitated, without explanation. Mr. Porter is the institution Personnel Officer and the individual I will continue to go to for advice in personnel related matters.

3. I have noted you have declined a physical by the institution physician and have indicated you have instructed your physicians to provide the information requested in the eight point letter which was provided to you on November 1, 2004. By your admission, or lack thereof, it appears you have also declined to undergo a physical by your physician and therefore will only have them address the eight point letter from your existing medical records.

4. As your supervisor, I will continue to deal with you directly and not through your representative. It is imperative that you understand it is important for me to deal with you directly and not through a third person. However, you can send information, documentation, etc. through your staff representative, if necessary.

Exhibit #128

5. Office of Personnel Management (OPM) guidelines clearly address the issue of providing documentation for your use of Family and Medical Leave Act of 1993 (FMLA). Specifically, it states, "Advance Notice and Medical Certification", The employee must provide notice of his or her intent to make family and medical leave not less than 30 days before leave is to begin or as soon as is practicable. An agency may request medical certification of FMLA leave taken to care for an employee's spouse, son, daughter, or parent who has a serious health condition or for the serious health condition of the employee." We are asking for this information to substantiate your absence.

6. I have received your request for FMLA from November 1-30, 2004. Until I receive the documentation to support your FMLA request, I will not grant FMLA. However, I will grant you sick leave up to and including November 17, 2004. Should you fail to provide the requested documentation to support your FMLA request, or documentation to substantiate your sick leave, you will be carried in an Absence Without Approved Leave (AWOL) status after November 17, 2004.

Should you have any questions, please feel free to contact me at (209) 386-4701.

Sincerely,

Jesse Gonzalez
Executive Assistant

cc: HRM
File

November 10, 2004

MEMORANDUM FOR JESSE W. GONZALEZ, EXECUTIVE ASSISTANT

SUBJECT: Response to Memorandum dated November 4, 2004

This is in response to the Memorandum that I received from you dated November 4, 2004, address my E-mail sent to you on November 2, 2004. The following is for your review:

1) **You mention, On October 6, 2004, you did provide me a copy of a medical slip, however, you did not provide me with three physician reports providing diagnosis and prognosis to warrant your need to be on sick-leave status. You may have provided them to Mr. Rodriguez who handles Workman's Compensation issues, but you did not provide them to me.**

Response: On October 6, 2004, Again, I personally provided you a copy of my medical slip and three Physician Reports with diagnosis and prognosis to warrant my need to be on sick-leave status. You state, that I can forward documentation through Mr. Rodriguez, which you have not allowed him to provide you a second copy of the initial medical reports. We all have been trained extensively every year on annual leave, sick leave, FMLA leave etc., which if I didn't provide you these private medical reports initial why did you initially approve my sick leave and why did it take you almost thirty days later to formally request this information through your memorandum date October 29, 2004, especially since we spoke on October 22, 2004, and you never once mentioned needing my private medical reports to substantiate my sick-leave status. By your admission once again, or lack thereof, documents either set on your desk for weeks or have become misplaced. I will personally provide you a second copy of my medical reports, which I will be requesting signature and date of receipt. This will show once again I have been cooperating in good faith.

2) **I have not provided any medical information to Mr. Porter or Mr. Booth. I did provide the medical slips to Mr. Porter, but only to determine if they met required standards, because they indicated you were totally incapacitated, without explanation. Mr. Porter is the institution Personnel Officer and the individual I will continue to go to for advise in personnel related matters.**

Response: During my meeting with Mr. Porter, Mr. Booth, and Mr. Rodriguez, and my self, Mr. Porter and Mr. Booth mentioned on several occasions my current physical and mental health status, which is protected under FOIA, Privacy Act of 1974, Code of Federal Regulations Tile 5. I never authorized my medical information to be provide to anyone else other then you, Warden Schultz, and

Mr. Rodriguez. I see my request to have Mr. Porter removed from all my proceeding mentioned previously has been denied. I have provided Mr. Porter with detail information about Executive staff misconduct and hostile work environment issues, which he provided me guidance.

3) **I have noted you have declined a physical by the institution physician and have indicated you have instructed your physicians to provide the information requested in the eight point letter which was provided to you on November 1, 2004. By your admission, or lack therefore, it appears you have also declined to undergo a physical by your physician and therefore will only have them address the eight point letter from your existing medical records.**

Response 1: By your admission once again, or lack thereof, it appears that someone is not aware of the content in your memorandum dated October 29, 2004. This memorandum allows me to comply with the three of the following measures: **1.** I could see the institution physician or provide documentation from my personal physician, or both, I'm not even required to see either of these physicians. **2.** I could decide to see the institution physician for a medical examination. **3.** I could provide documentation from my personal physician, which the institution will pay for any examination necessary to provide this assessment. Your memorandum never requested for me to undergo a physical examination by my personal physician, which it referred to any examination necessary to provide an assessment. It maybe be difficult for somebody who does not have the knowledge to distinguish the difference between physical, medical, psychiatric, therapy, and/or any examination/assessment necessary. I receive therapy treatment/assessment session weekly and psychiatric evaluation one to two times a month, which means my medical records are updated continues, which rules out your theory that you will receive medical reports based off existing medical records.

4) **As your supervisor, I will continue to deal with you directly and not through your representative. It is imperative that you understand it is important for me to deal with you directly and not through a third person. However, you can send information, documentation, etc. through your staff representative, if necessary.**

Response: I believe on September 3, 2004, with the new management changes the Safety Department was assigned to the Executive Assistant, which this is the safety departments third supervisor in four years. I believe no other department's have been supervised by three different executive staff since the activation of USP Atwater. On October 22, 2004, you called me at home and reminded me on six (6) different occasions that I now report directly to you! You also asked, we don't have any miss understanding who you report to and what I expect from you, do we Leroy! I still don't clearly understand were your hostile and inflammatory manner come from, since we hadn't spoken to each other since November 1, 2004. This type of negative communication is unwarranted and shows the need for all communication and transfer of documentation should be conducted through my staff representative or some type of witness we both trust to ensure both sides are on the same playing field.

5) **Office of Personnel Management (OPM) guidelines clearly address the issue of providing documentation for your use of Family and Medical Leave Act of 1993 (FMLA). Especially, it states, "Advance Notice and Medical Certification", The employee must provide notice of his or her intent to make family and medical leave not less than 30 days before leave is to begin or as soon as is practicable. An agency may request medical certification of FMLA leave taken to care for an employee's spouse, son, daughter, or parent who has a serious health condition or for the serious health condition of the employee." We are asking for this information to substantiate your absence.**

Response 1: Previously I was authorized FMLA for my mother having surgery, which was within the same week by Mr. Booth. Mr. Booth never requested a medical slip or diagnosis or prognosis of my mothers current health status, which the FMLA was approved upon request, which I would like to request what has changed from then to now besides the obvious of continued retaliation and harassment.

Response 2: The Office of Personnel Management (OPM), falls under Code of Federal Regulations Title 5, Administrative Personnel, Chapter 1 Office of Personnel Management, Subpart L Family and Medical Leave, states, **1.** the employee shall provide the employing agency with not less than 30 days notice, before that date the leave is to begin, of the employee's intention to take FMLA leave, **except that if that date of the treatment requires leave to begin in less than 30 days**, the employee shall provide such notice as is practicable, which this did occur. **2.** I agree the employing agency **MAY REQUIRE** medical certification of FMLA leave, which again Mr. Gonzalez you never requested any medical certification from me to substantiate FMLA status. **The FMLA status was to be used to continue my pay until I provided new medical reports from my physicians, which we agreed to. 3.** Also, an employee must provide the written medical certification required by paragraph (a), (d), (e) and (g) of title 5, signed by a health care provider, no later that **15 calender days** after the date the **Agency Requests** such medical certification. If it is not practicable under the particular circumstances to provide the requested medical certification no later than **15 calender days** after the date requested by the Agency despite the employee's diligent, good faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, but no later that **30 calender days** after the date the Agency requests such medical certification, **which the date you requested medical certification was upon my receipt of this memorandum of November 9, 2004.**

6) **I have received your request for FMLA from November 1-30, 2004. Until I receive the documentation to support your FMLA request, I will not grant FMLA. However, I will grant you sick leave up to and including November 17, 2004. Should you fail to provide the requested documentation to support your FMLA request, or documentation to substantiate your sick leave, you will be carried in an Absence Without Approved Leave (AWOL) status after November 17, 2004.**

Response 1: Under the FMLA a medical certification provided shall be sufficient if it states, the date on which the serious health condition commenced; the probable duration of the condition; the appropriate medical facts within the knowledge of the health care provider regarding the condition. The information you have requested is above and beyond any medical certification including the medical certification requirements for FMLA. Also, once an employee submits a completed medical certification signed by the health care provider, the agency may not request new information from the health care provider. However, a health care provider representing the agency, including a health care provider employed by the agency or under administrative oversight of the agency, may contact the health care provider who completed the medical certification, with the employee's permission, for purpose of clarifying the medical certification. This also includes regular sick leave because of patient and physician confidentiality.

Response 2: I originally requested sick leave from you to continue my pay, from November 1-30, 2004. Your memorandum dated October 29, 2004, stated, before further sick leave can be approved, you must substantiate your illness, which brings us back to my original request for FMLA, which I requested until I could provide you an updated medical certification from my physicians. There appears to be two people writing these memorandums and they both don't seem to be speaking to each other, which it makes it very confusing for me translate this information and to ensure I comply with your requests.

Response 3: Under the FMLA Act, which is probably similar to regular sick leave request; If after the leave has commenced, the employee fails to provide the requested medical certification, the Agency may, **1.** Charge employee as Absent Without Leave (AWOL) or **2.** Allow the employee to request that the provisional leave be charged as Leave Without Pay (LWP) or **3.** Charged to the employee's annual and/or sick-leave account, as appropriate, which you elect to immediately use AWOL status as a tool to threaten, intimidate, or coerce me for the purpose of interfering with the exercise of any rights which I may have under the FMLA and sick leave Act.

Response 4: Since you have placed me on regular sick leave status, I will with draw my request for FMLA upon the submission of the medical certifications from my physicians. I will provide you an updated Request for Leave or Approved Absence for November 1 through December 31, 2004. I will be requesting a signature and date of receipt for these documents.

I would expect these type of memorandums and phone conversations if I was an employee who abuses sick leave or an employee with disciplinary problems, but I am a thirteen (13) year veteran with an impeccable record. I have never received one negative log entry or one disciplinary action over my entire career. My loyalty, integrity, and pride/team work towards the Bureau of Prison is above reproach. I guess this is the way we treat Bureau Family when they are out ill and in need for support to help them through the recovery process. I guess the question needs to be asked, why would someone be treated like a second rate citizen by the people you intrust your life with and without merit.

If there are any further information, please do not hesitate to contact my staff representative. I thank you in advance for your cooperation.

Sincerely,

Leroy A. Smith Jr.

cc: Harley G. Lappin, Director
Joseph E. Gunja, Western Regional Director
Mike Jensen, Senior Field Representative
for Congress Dennis Cardoza
Matthew Glover, Office of Special Counsel
Phil Rodriguez, Staff Representative
Paul M. Schultz, Warden

November 10, 2004

MEMORANDUM FOR JESUS W. GONZALEZ, EXECUTIVE ASSISTANT

SUBJECT: Response to Memorandum dated November 4, 2004

I will be providing you a copy of my response to your memorandum dated November 4, 2004. The memorandum that I am providing you is dated November 10, 2004.

If there are any questions or concerns, please do not hesitate to contact me or my staff representative. I thank you in advance for your cooperation.

Sincerely,

Leroy A. Smith Jr,

ISSUED BY:

Leroy A. Smith Jr. 11/10/04

Leroy A. Smith Jr. Date

I have received two (1) Memorandum dated November 10, 2004.

RECEIVED BY:

Refused to Sign at 11:30 A.M. 11/10/04

Jesus W. Gonzalez Date

cc: File

November 10, 2004

MEMORANDUM FOR JESUS W. GONZALEZ, EXECUTIVE ASSISTANT

SUBJECT: Medical Slip, Physician Reports

I will be providing you a copy of my Medical Slip to you dated October 18, 2004, and Therapist Assessment dated November 2, 2004, Psychiatric Evaluation dated November 8, 2004. Also, a Request for Leave or Approved Absence dated November 10, 2004.

I in good faith I have provided you a copy to these reports substantiate my mental health illness, which I hope you in good faith will approve my sick-leave. If this information is acceptable by you, I will request that I use regular sick leave instead of my Family and Medical Leave Act (FMLA) request for Serious Health Condition of Self.

If there are any questions or concerns, please do not hesitate to contact me or my staff representative. I thank you in advance for your cooperation.

Sincerely,

Leroy A. Smith Jr,

ISSUED BY:

Leroy A. Smith Jr. 11/10/04

Leroy A. Smith Jr. Date

I have received two (1) Medical Slips and three (2) Physician Reports.

RECEIVED BY:

Refused to Sign at 11:32 A.M. 11/10/04

Jesus W. Gonzalez Date

cc: File

November 10, 2004

MEMORANDUM FOR JESUS W. GONZALEZ, EXECUTIVE ASSISTANT

SUBJECT: **Medical Slip, Physician Reports**

I will be providing you a second copy of my Medical Slip dated October 6, 2004, Therapist Assessment dated September 22, 2004, Psychiatric Evaluation dated September 27, 2004, and Physician Report dated October 1, 2004.

I in good faith I an providing you a second copy to substantiate my mental health illness, for the sick leave you have already approved from 10-06-2004, through October 30, 2004.

If there are any questions or concerns, please do not hesitate to contact me or my staff representative. I thank you in advance for your cooperation.

Sincerely,

Leroy A. Smith Jr,

ISSUED BY:

Leroy A. Smith Jr. — 11/10/04 Date

I have received two (1) Medical Slip and three (3) Physician Reports.

RECEIVED BY:

Refused to Sign at 11:31 A.M. Jesus W. Gonzalez — 11/10/04 Date

cc: File

November 10, 2004

MEMORANDUM FOR JESSE W. GONZALEZ, EXECUTIVE ASSISTANT

SUBJECT: Receipt of Medical Slips, Physician Reports, Request for Leave or Approved Absence Form, and Response to Memorandum dated November 4, 2004

On November 10, 2004, at approximately 11:27 a.m., I personally met with you in your office to provide documentation you have requested from me to substantiate my current medical status. I acknowledge the following documentation has been provided to you as requested:

1) I provided you an original document of my response to your memorandum dated November 4, 2004, which I requested a signature and date upon receipt of this document. You asked, are you saying if I don't sign for this document your not going to provide the other documents to me!? I replied, No, I will provide you the other documents, but I will be requesting a signature and date of receipt for them also. I then asked, I thought we were cooperating with each other, but you seem aggravated? You didn't reply. You then stated, I already have a copy of this memorandum from you by e-mail. I then asked, are you refusing to sign for this document? You replied, Yes.

2) I provided you a second copy of my initial medical slip and three physician reports, which I requested a signature and date from you upon receipt of these documents. Again, you refused to sign and date the acknowledgment receipt memorandum.

3) I provided you an copy of my second medical slip, and two original physician medical evaluation reports. I also provided you with a new request for leave or approved absence form dated November 10, 2004, which I requested your signature and date upon receipt of these documents. Again, you refused to sign and date the acknowledgment receipt memorandum. I also requested that I be placed on regular sick leave then FMLA leave status, which you agreed to and mentioned that you would sign my sick leave form and provide it to Ms. Salm for me.

I again, request that this information be properly safeguarded according to Office of Personnel Management Procedures (OPM), Freedom of Information Act (FOIA) guidelines, and Privacy Act of 1974 Guidelines etc.

If there are any further information needed, please do not hesitate to contact me or my staff representative. I thank you in advance for your cooperation.

Sincerely,

Leroy H. Smith Jr.

Leroy H. Smith Jr.

cc: Harley G. Lappin, Director
Joseph E. Gunja, Western Regional Director
Mike Jensen, Senior Field Representative
for Congress Dennis Cardoza
Matthew Glover, Office of Special Counsel
Phil Rodriguez, Staff Representative
Paul M. Schultz, Warden

Copy to L. Smith

REQUEST FOR LEAVE OR APPROVED ABSENCE

1. NAME (Last, First, Middle Initial)	2. EMPLOYEE OR S
Smith, Leroy A. Jr.	569-08-3409

3. ORGANIZATION

USP Atwater

4. TYPE OF LEAVE/ABSENCE (Check appropriate box(es) below.)	DATE From:	DATE To:	TIME From:	TIME To:	TOTAL HOURS
☐ Accrued Annual Leave					
☐ Restored Annual Leave					
☐ Advance Annual Leave					
☒ Accrued Sick Leave	11-1-04	12-31-04	7:30 a.m.	4:00 p.m.	328
☐ Advance Sick Leave					
☐ Compensatory Time Off					
☐ Other Paid Absence (Specify in Remarks)					
☐ Leave Without Pay					

Purpose: ☐ Medical/dental/optical examination of requesting employee ☐ Other

☐ Care of family member/bereavement, including medical/dental/optical examination of family member

LEAVE

If annual leave, sick leave or leave without pay will be used under the Family and Medical Leave Act of 1993, please provide the following information:

☐ I hereby invoke my entitlement to Family and Medical Leave for:

☐ Birth/Adoption/Foster Care

☐ Serious Health Condition of Spouse, Son, Daughter or Parent

☐ Serious Health Condition of Self

Contact your supervisor and/or your personnel office to obtain additional information about your entitlement and responsibilities under the Family and Medical Leave Act of 1993.

6. REMARKS:

7. CERTIFICATION: I hereby request leave/approved absence from duty as indicated above and certify that such leave/absence is requested for the purpose(s) indicated. I understand that I must comply with my employing agency's procedures for requesting leave/approved absence (and provide additional documentation, including medical certification, if required) and that falsification of information on this form may be grounds for disciplinary action, including removal.

EMPLOYEE SIGNATURE Leroy A. Smith Jr. DATE 11-10-04

8. OFFICIAL ACTION ON REQUEST: ☒ APPROVED ☐ DISAPPROVED
(If disapproved, give reason. If annual leave, initiate action to reschedule.)

11-1 thru 11-8 Sick Leave, 11-9 thru 12-31, FMLA

SIGNATURE DATE 11-23-04

PRIVACY ACT STATEMENT

Section 6311 of Title 5, United States Code, authorizes collection of this information. The primary use of this information is by management and your payroll office to approve and record your use of leave. Additional disclosures of the information may be: To the Department of Labor when processing a claim for compensation regarding a job connected injury or illness; to a State unemployment compensation office regarding a claim; to Federal Life Insurance or Health Benefits carriers regarding a claim; to a Federal, State, or local law enforcement agency when your agency becomes aware of a violation or possible violation of civil or criminal law; to a Federal agency when conducting an investigation for employment or security reasons; to the Office of Personnel Management or General Accounting Office when the information is required for evaluation of leave administration; or to the General Services Administration in connection with its responsibilities for records management.

Where the employee identification number is your Social Security Number, collection of this information is authorized by Executive Order 9397. Furnishing the information on this form, including your Social Security Number, is voluntary, but failure to do so may result in disapproval of this request.

If your agency uses the information furnished on this form for purposes other than these indicated above, it may provide you with an additional statement reflecting those purposes.

Mr. Gunja, I would like to see if we can hold an informal meeting in the Regional Office to talk about the current issues I have brought to light about USP Atwater. These issue just don't affect me, they affect my family, my employee, the institution, and the Bureau of Prisons. If you would want someone present during the informal meeting, I have no objections to that format.

I look forward to speaking with you and resolving these issues as quickly as possible. Thanks for your time and consideration on this matter.

November 12, 2004

MEMORANDUM FOR TO WHOM IT MAT CONCERN

FROM: Leroy A. Smith, Safety Manager

SUBJECT: Phone Conversation With Mr. Gonzalez

On November 12, 2004, at approximately 3:34 p.m., I received a phone call from Mr. Gonzalez.

Mr. Gonzalez stated, I called you earlier, why haven't you called me back!

I replied, that I was out with my son and there were no messages on my voice mail.

Mr. Gonzalez then stated, I listened to the voice mail you have, then changed the subject and asked, you e-mailed the Regional Director to have a meeting with him?

I replied, Yes, I e-mailed him to setup an informal meeting.

Mr. Gonzalez then stated, Mr. Gunja said to tell you that he will not be meeting with you.

I asked, did Mr. Gunja mention why we will not be able to meet?

Mr. Gonzalez replied, No, I'll speak to you later and hung up the phone.

Mr. Gunja, I received a call today at 3:34 p.m. fro Mr. Gonzalez, Executive Assistant, USP Atwater, pertaining to the informal meeting that I have requested with you. I am very sorry that you have declined to meet with me and try to resolve the issues concerning USP Atwater.

I am very grateful for you time and consideration on this matter. Once again, thank you.

November 23, 2004

MEMORANDUM FOR TO WHOM IT MAY CONCERN

FROM: **Theresa M. Smith, Medical Records Technician**

SUBJECT: **Conversation with Warden Schultz**

On November 23, 2004 between 9:00 a.m. to 10:00 a.m., I received a phone call from Warden Schultz. Warden Schultz mentioned that he had tried to e-mail my husband with no success and that he had responded to a couple of questions my husband had written him about. Warden Schultz asked if I would come to his office to pickup the envelopes and deliver them to my husband. I mentioned to Warden Schultz that it sounded good and that I would stop by his office to pick them up. Warden Schultz was not in his office when I arrived, which Ms. Salm, Warden's Secretary provided me the two envelopes at approximately 3:30 p.m.

From: Paul Schultz
To: LEROYATWATER@aol.com
Date: 11/23/2004 9:09:29 AM
Subject: Request

Mr. Smith,

Larrie Lee, Agent, Office of Internal Affairs is attempting to contact you. Due to your current status she has not contacted you at your residence. However, she has indicated that if you wish to contact her, you may call her at 303.365.4412.

Copy to L. Smith

REQUEST FOR LEAVE OR APPROVED ABSENCE

1. NAME *(Last, First, Middle Initial)*	2. EMPLOYEE OR S
Smith, Leroy A. Jr.	569-08-3409

3. ORGANIZATION

USP Atwater

4. TYPE OF LEAVE/ABSENCE *(Check appropriate box(es) below.)*	DATE From:	DATE To:	TIME From:	TIME To:	TOTAL HOURS
☐ Accrued Annual Leave					
☐ Restored Annual Leave					
☐ Advance Annual Leave					
☒ Accrued Sick Leave	11-1-04	12-31-04	7:30 a.m.	4:00 p.m.	328
☐ Advance Sick Leave					
☐ Compensatory Time Off					
☐ Other Paid Absence *(Specify in Remarks)*					
☐ Leave Without Pay					

Purpose: ☐ Medical/dental/optical examination of requesting employee ☐ Other

☐ Care of family member/bereavement, including medical/dental/optical examination of family member

LEAVE

If annual leave, sick leave or leave without pay will be used under the Family and Medical Leave Act of 1993, please provide the following information:

☐ I hereby invoke my entitlement to Family and Medical Leave for:

☐ Birth/Adoption/Foster Care

☐ Serious Health Condition of Spouse, Son, Daughter or Parent

☐ Serious Health Condition of Self

Contact your supervisor and/or your personnel office to obtain additional information about your entitlement and responsibilities under the Family and Medical Leave Act of 1993.

6. REMARKS:

7. CERTIFICATION: I hereby request leave/approved absence from duty as indicated above and certify that such leave/absence is requested for the purpose(s) indicated. I understand that I must comply with my employing agency's procedures for requesting leave/approved absence (and provide additional documentation, including medical certification, if required) and that falsification of information on this form may be grounds for disciplinary action, including removal.

EMPLOYEE SIGNATURE Leroy A. Smith Jr. DATE 11-10-04

8. OFFICIAL ACTION ON REQUEST: ☒ APPROVED ☐ DISAPPROVED
(If disapproved, give reason. If annual leave, initiate action to reschedule.)

11-1 thru 11-8 Sick Leave, 11-9 thru 12-31, FMLA

SIGNATURE DATE 11-23-04

PRIVACY ACT STATEMENT

Section 6311 of Title 5, United States Code, authorizes collection of this information. The primary use of this information is by management and your payroll office to approve and record your use of leave. Additional disclosures of the information may be: To the Department of Labor when processing a claim for compensation regarding a job connected injury or illness; to a State unemployment compensation office regarding a claim; to Federal Life Insurance or Health Benefits carriers regarding a claim; to a Federal, State, or local law enforcement agency when your agency becomes aware of a violation or possible violation of civil or criminal law; to a Federal agency when conducting an investigation for employment or security reasons; to the Office of Personnel Management or General Accounting Office when the information is required for evaluation of leave administration; or to the General Services Administration in connection with its responsibilities for records management.

Where the employee identification number is your Social Security Number, collection of this information is authorized by Executive Order 9397. Furnishing the information on this form, including your Social Security Number, is voluntary, but failure to do so may result in disapproval of this request.

If your agency uses the information furnished on this form for purposes other than these indicated above, it may provide you with an additional statement reflecting those purposes.

Subj: **Request**
Date: 11/23/2004 9:10:13 AM Pacific Standard Time
From: pschultz@bop.gov
To: LEROYATWATER@aol.com

Mr. Smith,

Larrie Lee, Agent, Office of Internal Affairs is attempting to contact you. Due to your current status she has not contacted you at your residence. However, she has indicated that if you wish to contact her, you may call her at 303.365.4412.

Attachment #181 C

October 26, 2004

MEMORANDUM TO: PAUL M. SCHULTZ, WARDEN
UNITED STATES PENITENTIARY ATWATER
#1 Federal Way
Atwater, CA. 95301

Re: Request for Data/Information

In accordance with the Privacy Act of 1974 and the Freedom of Information Act (FOIA), I request the following documentation.

Selective Placement Program:

1. I am requesting photo footage from the Selective Placement Program conducted on November 9, 2001.

Please send the requested documentation to: Mr. Leroy A. Smith, Jr., 2708 5th Street, Atwater, CA 95301. If you do not have the requested documentation please indicate why it is not available or specify why it cannot be released. This documentation is required for a potential Legal Action and EEO Complaint.

Thank you for your time.

/S/
Leroy A. Smith, Jr.
BOP Employee

cc: File

Please review the below attachment. The photos being requested will be used to assist me with my current EEO Claim.

I would like to thank you in advance for your cooperation. If there are any questions, please do not hesitate to let me know.

Tuesday, October 26, 2004 America Online: LEROYATWATER

October 27, 2004

MEMORANDUM TO: PAUL M. SCHULTZ, WARDEN
UNITED STATES PENITENTIARY ATWATER
#1 Federal Way
Atwater, CA. 95301

Re: Ethical Conflict of Interest

I am respectfully requesting that Mr. Gregory C. Porter, Employee Services Manager be excused from any and all of my personnel and professional proceedings (i.e., Workers Compensation Case, EEO Cases, Formal Bureau Investigation Cases, Formal Outside Agency Investigation Cases, Legal and/or Litigation Cases etc.). Mr. Porter and I have discussed on several occasions these issues under strict confidentiality, which Mr. Porter is very familiar with my cases that are still pending. I believe this would be an ethical conflict of interest for Mr. Porter to be allowed to participate with any and all of my personal and professional proceedings, which he has provided me personal guidance and professional advise. This gives Mr. Porter personal insight into work place issues, which would be a conflict of interest towards me, but as will as the Executive staff. Mr. Porter informed me, that I can have any staff representative of my choice, except he would have to be excluded because of his position and he would most likely be the person assisting and writing the Executive staff responses to all the issues.

Again, I respectfully request that Mr. Porter be excused from any and all of my personnel and professional proceeding pertaining to the above mentioned cases. I would like to thank you in advance for your consideration on this matter, which will ensure a fair due processes for both sides.

Please send your response to: Mr. Leroy A. Smith, Jr., 2708 5th Street, Atwater, CA 95301 or at LEROYATWATER@AOL.COM. If this request can not be granted please indicate why or specify which policy doesn't allow this request to be accepted. This documentation is required for a potential Legal Action and EEO Complaint.

Thank you for your time.

/S/
Leroy A. Smith, Jr.
BOP Employee

cc: File

Please review the below attachment. I would like to thank you in advance for your consideration on this matter. If there are any questions, please do not hesitate to let me know.

Attachment # 13 | 9

November 30, 2004

MEMORANDUM TO: PAUL M. SCHULTZ, WARDEN
UNITED STATES PENITENTIARY ATWATER
#1 Federal Way
Atwater, CA. 95301

Re: Response/Request

I was informed by Ms. Smith (my wife) that she received a phone call from you on November 23, 2004, between 9:00 a.m. and 10:00 a.m, which was pertaining to me. I was then informed, that you were trying to respond to my questions by e-mail, which I had written to you previously, but you were not having any success. I was also informed, that you requested Ms. Smith to come to your office and pickup two envelopes caring your responses and for her to deliver them to me personally.

I would like to acknowledge that I have received the two envelopes from Ms. Smith. I opened each envelope contained the following: Envelope #1 contained my request for leave or approved absence, which I hand delivered to Mr. Gonzalez (Supervisor) on November 10, 2004, before the deadline of November 17, 2004, and being placed on AWOL status, which he approved the FMLA sick leave on November 23, 2004, thirteen days later. Envelope #2 contained information from you about the Office of Internal Affairs dated November 23, 2004, at 9:09 a.m. and I also received the same correspondence by you over e-mail on November 23, 2004, at 9:10 a.m. The memorandums I sent you to respond to were dated October 26, 2004, and October 27, 2004, which requested the following: **1.** A Request for Data/Information in accordance to Privacy Act of 1974 and the Freedom of Information Act (FOIA) to assist with my EEO Compliant and **2.** A request to have Mr. Gregory C. Porter, Employee Services Manager be excused from all of my personal and professional proceedings because of ethical conflict of interest. The correspondences you provided Ms. Smith were not in response to any of my memorandums I sent to you previously.

On August 3, 2004, you inappropriately brought Ms. Smith up during a Management meeting we had concerning the UNICOR Computer Recycling Factory, which was a vicious attempt to threaten, intimidate, and coercive me into ignoring the ongoing safety and environmental health concerns. You, Mr. Luna, and Ms. Pagan were aware of how Ms. Smith was treated while working in education and the inappropriate comments from her supervisor (Mr. Chavez), which Ms. Smith and Ms. Pagan brought to your attention.

Again, I respectfully request Ms. Smith be removed from any Management concerns directly pertaining to me. I have directed Ms. Smith to inform Mr. Rodriguez (Staff Representative) to accompany her to any Executive staff's office even if it appears to pertain to me. I have already formally notified Mr. Gonzalez verbally and in writing, that I have authorized Mr. Rodriguez to be my staff representative, which correspondence pertaining to me can be routed through him. If the Executive staff won't acknowledge Mr. Rodriguez as my authorized staff representative, then correspondences should continue by e-mail and through the United States Postal Service, which seemed to be working very well for Mr. Gonzalez and Mr. Porter.

To use Ms. Smith like a pond to get to me is unthinkable and these type of actions will be judged by others and our blessed father from above. If this is an attempt to intimidate and harass Ms. Smith to get to me, I have spoken with Mr. Rodriguez about these issues and he has advised me that he will take any

action necessary to protect Ms. Smith, on behalf of the Union. **Once again**, this raises my concerns about Ms. Smith's safety and welfare and myself when I am able to return to work.

Please send your response to: Mr. Leroy A. Smith, Jr., 2708 5th Street, Atwater, CA 95301 or at LEROYATWATER@AOL.COM. If this request can not be granted please indicate why.

Thank you for your time.

/S/
Leroy A. Smith, Jr.
BOP Employee

cc: Congressman Dennis Cardoza
Matthew Glover, Office of Special Counsel
Phil Rodriguez, Staff Representative
Harley G. Lappin, Director of Bureau of Prisons
J. E. Gunja, Western Regional Director

U.S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary

OFFICE OF THE EXECUTIVE ASSISTANT (LOU)

1 FEDERAL WAY
ATWATER, CA 95301

March 7, 2005

Leroy Smith
Safety Manager
United States Penitentiary
Atwater, CA 95301

Dear Mr. Smith:

Before further sick leave can be approved, you must substantiate your illness. The medical slip you submitted on March 1, 2005, does not provide management with the reason you are off work. Total incapacitated does not provide Management with sufficient information to make a reasonable decision regarding your absence. Without medical substantiation, further requests for sick leave will not be approved. You were previously informed of this requirement on October 29, 2004.

I am only approving 40 hours of sick leave for you up through March 6, 2005. Until you can provide documentation that substantiates your illness you will be carried in an Absent Without Approved Leave (AWOL) status.

Furthermore, I am not approving your request for annual leave for March 1, 2005 through March 31, 2005. Should you decide to return to work, you will be required to provide a medical certification from your doctor indicating you are cleared for full duty.

Please contact me if you have questions about this letter.

Sincerely,

Jesus W. Gonzalez
Executive Assistant

cc: Leave Request
Disability Certificate

March 11, 2005

MEMORANDUM FOR JESSE W. GONZALEZ, EXECUTIVE ASSISTANT

SUBJECT: Updated Medical Reports

This is in response to the your certified letter I received on March 9, 2005, dated March 7, 2005, which addresses that I need to substantiate my illness.

On October 29, 2004, you requested an eight point diagnosis and prognosis to be provided to you, which you lost my original medical reports provided on October 6, 2004. In this letter you deny me any further sick-leave until I substantiate my illness again. I then request to be placed on FMLA, which you agreed to, to ensure my pay continues until I have my doctors provided you with new medical reports. Then on November 4, 2004, I receive a certified letter denying me FMLA and placing me back on sick-leave.

Secondly, on November 10, 2004, I provided you a medical report from Dr. Ilano, dated November 8, 2004, which states, Mr. Smith will continue with his weekly therapy with Ms. Stott and I she will continue to monitor his medications with the hope that his symptoms will be under control. She anticipated that his symptoms can be controlled in about 3-6 months provided that he is in a controlled work environment with no reported hostility. At that time, I expect full recovery, which you excepted. The month of December 2004, January 2005, and February 2005, I provided you just a medical slip, which you have accepted and didn't request for a updated medical report.

Thirdly, I had Mr. Rodriguez provide you a medical and sick-leave/ annual-leave slips extending me through March 2005, which I believed was acceptable. I never received a phone call from you requesting updated medical reports.

Fourthly, your letter is intimidating, threatening, and retaliation by placing me on AWOL status on March 6, 2004, which you have started a personnel action without any justification. This is reprisal for the recent MSPB, EEO complaints filed on you and Warden Schultz and for the recent press releases, which violates my right under the whistleblower protection act. All of this could of been resolved with a courtesy call, which you haven't spoken with me since November 10, 2004, which was under similar circumstances.

Fifthly, I provided you updated medical reports on March 10, 2005, from Dr. Ilano, and Ms. Stott, dated March 10, 2005. I respectfully request that my AWOL status be rescinded and that I am placed back on sick-leave/annual leave for the month of March. As you can tell by the medical report my doctors were not very happy with you threats and intimidation tactics.

Sixthly, It is clear that you are not concerned about my immediate health and welfare or these threatening and intimidating letter would. It is also clear there a conspiracy by the Executive staff to ensure that my return to work will not be pleasant and plan to conspire together to ensure I receive disciplinary action or removal from my job. All because I enforced the Safety and Environmental Health Program and trying to ensure the staff and inmates working for UNICOR throughout the Bureau.

Finally, I respectfully request that in the future you provide **Mary Dryovage**, **Attorney**, a courtesy call for any personal, professional, and medical information needed from me to support the needs of the Agency. I also respectfully request that I receive a letter stating that my AWOL status has been rescinded and my sick-leave/annual-leave has been re-instated for the month of March, which my pay will not affected.

If there is any further information or documents needed, please do not hesitate to contact Ms. Mary Dryovage, Attorney, at (415) 593-0095. I thank you in advance for your cooperation.

Sincerely,

/S/
Leroy A. Smith Jr.

cc: Alberto R. Gonzales, Attorney General
Harley G. Lappin, Director
Joseph E. Gunja, Western Regional Director
Mike Jensen, Senior Field Representative
for Congress Dennis Cardoza
Matthew Glover, Office of Special Counsel
Phil Rodriguez, Staff Representative
Paul M. Schultz, Warden
Mary Dryovage, Attorney

SBC Yahoo! Mail

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YAHOO! MAIL

Welcome, **leroy3409@sbcglob...**
[Sign Out, My Account]

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Date: Fri, 11 Mar 2005 15:00:27 -0800 (PST)

From: "Leroy Smith" <leroy3409@sbcglobal.net> Add to Address Book

Subject: Reprisal, Intimidation, Threating, and Coercive Personnel Action

To: j6gonzalez@bop.gov

CC: argonzales@doj.gov, "Attorney General" <askdoj@usdoj.gov>, agonzales@doj.govh, "Harley Lappin" <hglappin@bop.gov>, "Joseph Gunja" <jgunja@bop.gov>, "Matthew Glover" <mcglover@osc.gov>, "Mike Jensen" <mike.jensen@mail.house.gov>, "phil rodriguez" <pxxrodriguez@bop.gov>, mdryovage@igc.org

Please review the above attachment. If there are any questions, please contact my

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Attachment #132 C

U.S. Department of Justice

Federal Prison System
United States Penitentiary

Warden's Office

#1 Federal Way, P.O. Box 019000
Atwater, California 95301

March 10, 2005

Leroy A. Smith, Jr.
Safety Manager
United States Penitentiary
Atwater, California 95301

Dear Mr. Smith:

You have been absent from work since October 6, 2004, except for short periods of time when you were being interviewed, were being prepped for an Arbitration, or as a witness at an Arbitration. Recently you have requested to be on leave for another 6 months, until September 2005. By this letter, you are directed to report to Dr. Jon Franco at the Federal Prison Camp, Health Services area at 2:00 p.m., on Thursday, March 17, 2005, to determine your fitness for duty. Dr. Franco will examine you and provide information concerning his diagnosis and prognosis.

This examination is necessary to determine your physical/medical condition and is required. Federal regulations provide that employees who occupy positions which have medical and physical standards submit to a medical examination whenever there is a direct question about an employee's continued capacity to meet the physical or medical requirements of a position. All positions within the Federal Correctional Institutions have physical/medical standards.

You may submit additional medical documentation and/or information from your personal physician or medical practitioner in connection with your medical/psychological condition. However, failure to report for this examination with Dr. Jon Franco on the date and time scheduled, may result in a proposal for disciplinary action, up to and including removal.

Sincerely,

Jesse Gonzalez
Executive Assistant

I have received the original and one copy of this letter.

Signature_____ Date _____

U.S. Department of Justice

Federal Prison System
United States Penitentiary

Office of the Executive Assistant

#1 Federal Way, P.O. Box 019000
Atwater, California 95301

March 16, 2005

Leroy A. Smith, Jr.
Safety Manager
United States Penitentiary
Atwater, California 95301

Dear Mr. Smith:

I received your Memorandum on Wednesday, March 16, 2005, at approximately 2:00 p.m.. In your memorandum you requested your fitness for duty physical be postponed to March 22, 2005, because you have a scheduled appointment in San Francisco, on March 17, 2005, at 2:00 p.m. with your attorney.

After considering your request, I have readjusted your appointment to 7:30 a.m., March 17, 2005, at the Federal Prison Camp, with Dr. Franco. This appointment should not interfere with the appointment you have scheduled with your attorney.

Again, this examination is necessary to determine your physical/medical condition and is required. Federal regulations provide that employees who occupy positions which have medical and physical standards submit to a medical examination whenever there is a direct question about an employee's continued capacity to meet the physical or medical requirements of a position. All positions within the Federal Correctional Institutions have physical/medical standards.

You may submit additional medical documentation and/or information from your personal physician or medical practitioner in connection with your medical/psychological condition. However, failure to report for this examination with Dr. Jon Franco on the date and time scheduled above, may result in a proposal for disciplinary action, up to and including removal.

This memorandum is to document our conversation on March 16, 2005, at approximately 3:00 p.m.

Sincerely,

//s//

Jesse Gonzalez
Executive Assistant

I have received the original and one copy of this letter.

7. Interference
8. Restraint
9. Coercion
10. Intimidation
11. Discrimination
12. Retaliation

I reported these allegations to the following Senior Executive and Management Officials:

1. Mr. Ashcroft, Former U.S. Attorney General
2. Mr. Gonzales, U.S. Attorney General
3. Mr. Lappin, Director Bureau of Prisons
4. Mr. Gunja, Western Regional Director
5. Mr. Schultz, Warden USP Atwater
6. Mr. Luna, Warden FDC San Diego
7. Mr. Booth, Associate Warden FCI Sheridan
8. Mr. Kapusta, Associate Warden FMC Lexington
9. Mr. Haro, Former Western Regional Director
10. Mr. O'Brien, Former Warden USP Atwater
11. Ms. Pagan, Associate Warden FCI Terminal Island

These Executive staff failed to follow protocol to report and protect the employee. This was pure discrimination and retaliation for reporting Unsafe and Unhealthful, and imminent danger working conditions associated with the Federal Prisons Industries Computer Recycling Program, Enforcing the Safety and Environmental Health Program, and filing against the Federal Prison Industries and Bureau of Prison Executive staff.

The Guiding Principles of Affirmative Employment in the Bureau of Prisons stated, The greatest Strength of the Bureau of Prisons is our Workforce, which was signed by Harley G. Lappin, Director I would like to present the following statements:

1. Workplace harassment, discrimination, and work place violence will not be tolerated, allegation will be immediately investigated.
2. Reprisal against staff who engage in protected activity will not be tolerated. The Agency supports the right of all employees to exercise their rights under the Civil Rights Status.
3. As the Director of the Federal Bureau of Prisons, I am committed to a model EEO Program and hold all CEO's, Managers and Supervisors accountable for the success of the program and for communicating these principles to all staff. **(See Attachment 134)**

NOTE: I would like to believe that these type of initiatives was written with conviction and not malice. I will provide the following that demonstrates what I believe is malice:

1. During an EEO interview **Q.** Did you ever receive any e-mail messages from Mr. Smith regarding alleged discrimination by the Executive Assistant? **A.** Mr. J. E. Gunja I don't know Emelio, because what happened was as he was e-mailing me all the time. I just started erasing. **(See Attachments 42, 42a, & 42b)**

U. S. Department of Justice
Federal Bureau of Prisons

Guiding Principles of Affirmative Employment in the Bureau of Prisons

The Greatest Strength of the Bureau of Prisons is our Workforce

The Bureau of Prisons is committed to the principles of equal employment opportunity for all employees and applicants for employment, regardless of their race, religion, color, sex, national origin, parental status, age, or disability.

All employees will have the freedom to compete on a fair and level playing field with equal opportunity for competition.

Equal employment opportunity covers all personnel/employment programs, management practices and decisions including, but not limited to, recruitment/hiring, merit promotion, transfer, reassignments, training and career development, benefits, and separation.

Workplace harassment, discrimination and workplace violence will not be tolerated, allegations will be immediately investigated, and where allegations are substantiated, appropriate action will be taken.

Reprisal against staff who engage in protected activity will not be tolerated. The agency supports the right of all employees to exercise their rights under the civil rights statutes.

As the Director of the Federal Bureau of Prisons, I am committed to a model EEO Program and hold all CEOs, Managers and Supervisors accountable for the success of the program and for communicating these principles to all staff.

Harley G. Lappin

Harley G. Lappin, Director

12-6-04

Date

2. On November 12, 2004, I asked Mr. J. E. Gunja, if we could hold a informal meeting in th Regional Office to talk about the current issues, I have brought to light about USP Atwater. These issues just don't affect me, they affect my family, my employee, the institution, and the Bureau of Prisons. I then receive a phone call from Mr. Jesse Gonzalez, Executive Assistant, USP Atwater, which he stated, "Mr. Gunja said to tell you that he will not be meeting with you." **(See Attachments 43, 43a, & 43b)**

Listing of Actual/Apparent Violations: The list below is the violation of Law, Rule, or Regulation, Specific Danger to Public Health or Safety, Abuse of Authority at USP Atwater.

1. Violations of Program Statement 3420.09 - 1. An employee may not use threats, or intimidation towards another employee, 2. An employee may not use profane, obscene, or otherwise abusive language. 3. Employees shall conduct themselves in a manner which will not be demeaning to fellow employees.
2. Violation of Program Statement 1210.24, Office of Internal Affairs - Class 1 - work place violence, conspiracy, obstruction, aiding and abetting, concealment, or failure to report any matter, Class 2 - threatening assault, work place violence and attempt , conspiracy, obstruction, aiding and abetting, concealment, or failure to report any matter in Class 1, Class 3 - Unprofessional conduct (disorderly conduct or abusive language).
3. Violation of Executive Order 12196 - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights.
4. Violation of **OSHA 29 CFR 1960** - Ensure that an employees are not subjected to restraint, interference, coercion, discrimination or reprisal for exercising their rights.
5. Violation of Program Statement 1600.08 - Employees are not subjected to restraint, interference, coercion, discrimination, or reprisal for exercising their rights under Executive Oder 12196, 29 CFR 1960 - or for participating in the Bureau's Safety and Environmental Health Program, Reported Unsafe and Unhealthy working conditions.
6. Violation of Program Statement 1601.04 - Workers Compensation Program.
7. Violation of 5CFR 630.1201Federal Family and Medical Leave Act.
8. Violation of Program Statement 3713.17- Discrimination Retaliation Complaint base on reporting Executive staff misconduct and unprofessional conduct, retaliation for reporting allegation to Office of Special Counsel, EEO, MSPB, and IRA violation.
9. Violation of Privacy Act of 1973, HIPPA, Patient and Doctor Privilege, Rehabilitation Act of 1973, and Denied Promotions

Action Planned or Should be Taken:

Disciplinary action should be against all management officials who failed to report and act on the allegations of Executive staff Misconduct, Unprofessional conduct, discrimination, and retaliation towards me.

CONCLUSION

The fact finding interview was conducted by Vernon Ledesma, Supervisory Special Agent and Scott Hourigan, Special Agent on December 7, 2004 for approximately 3 ½ hours, December 8, 2004 for approximately 7 ½ hours, and December 9, 2004 for approximately 10 hours. I

requested for a staff representative to accompany me during the interview at the request of Ms. Denni Stott, MFT, ART-BC **(See Attachment 135 dated December 2, 2004)** and Ms. M. Daisy Ilano, MD Psychiatrist **(See Attachment 136 dated December 3, 2004).** I also provided a copy of the physicians correspondence to Mr. Ledesma, which he still denied their request immediately.

At the beginning of this fact finding interview I was questioned by Mr. Vernon Ledesam, Supervisory Special Agent, Mr. Scott Hourigan, Special Agent, Ms. Marianne Cantwell, Federal Prisons Industries General Counsel and Bureau of Prisons Environmental Executive, Mr. Jim Crops, Federal Prison Industries Technical Officer, Mr. John Lee, Bureau of Prisons Assistant National Safety Coordinator, Mr. Matthew Korbelak, Bureau of Prisons Industrial Hygienist, and Mr. Jeff Limjoco, Environmental Law Attorney, which adds up to (2) OIA Investigators, (2) Environmental Attorneys, (2) Safety and Health Division staff, and (1) from Federal Prison Industries, for a total of seven staff representing the Federal Prison Industries and Bureau of Prisons and (0) staff representing the interviewee. The investigators would ask questions, which I was required to respond to as part of my affidavit. Also, the Field Experts asked questions, I was required to respond to their questions, but their questions or answers weren't required to be part of my affidavit or any other official report. This made me feel very intimidated, coerced, harassed, and discriminated against for engaging in a protected activity, which I have the right to exercise my rights under the Civil Rights Statutes. This did not feel like a fact finding interview, but a trial of my peers. This was not a comprehensive and objective investigation into my complaints nor the safety and health of staff, inmates, and staff families who were subjected hazardous metal/toxic materials knowingly and wilfully from 1994 through 2003 by top Executive and Middle Management staff, which is criminal intent.

On December 7, 2004, I e-mailed Mr. Harley G. Lappin, Director Bureau of Prisons, that I requested names and titles of all staff present during the fact finding interview, which Mr. Ledesam denied my request. I then informed Mr. Lapping, that I requested a Form-B (Administrative Investigation) from Mr. Ledesam, which he denied me again. I also informed Mr. Lappin, that everyone (interview team) was able to ask any questions and request copies of documents, but when I asked questions or copies of documents, Mr. Ledesam would continue to deny my requests. **(A copy of this e-mail went to the Attorney General and Mr. Joseph E. Gunja, Western Regional Director See Attachment 137)**

On December 7, 2004, I received an e-mail from Mr. John Dignam, Chief, Office of Internal Affairs (OIA), Federal Bureau of Prisons, on behalf of Mr. Lappin, which he stated, "there is no corresponding section in the labor statute affording this right to representatives of nonbargaining unit staff during an administrative investigation." Then he stated, "therefore it is neither necessary nor appropriate for you to have a staff representative during your interview." Also, he stated, "If you believe you need to accompany OIA staff members on a tour through UNICOR factory to provide them with useful and pertinent information which would be helpful in investigating your complaints, we welcome such a tour and will make arrangement for it." **(See Attachment 138, & 138a)** I was informed by Mr. Ledesam and Mr. Hourigan they already had conducted their UNICOR tour earlier that morning, which Mr. Dignam never mentioned to them to arrange a meeting to conduct the tour together.

Denni Stott, MFT, ATR-BC
2829 G Street
Merced, California 95340
(209) 726-1296

December 2, 2004

Mr. Scott Hourigan
Office of Internal Affairs
791 Chambers Road, Suite 300
Aurora, CO 80011

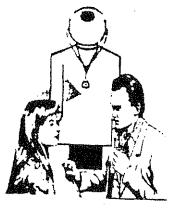
Dear Mr. Hourigan:

I am writing this letter at the request of Leroy Smith in regards to a meeting he has scheduled with you on Tuesday, December 7 and any future meetings. I support Mr. Smith in his request to have the meeting held at a neutral location of his choice either off or on the grounds of USP Atwater. In addition, I support Mr. Smith having a staff representative present during this and any future meetings. Thank you for your consideration.

Sincerely,

Denni Stott, MFT. ATR-BC

Denni Stott, MFT, ATR-BC



JK Health Management Services

507 West 25th St., Merced, Ca 95340 Tel. # (209) 384-1571 Fax # (209) 384-1144

M. Daisy Ilano, M.D.

December 3, 2004

Re: Leroy Smith
Date of Birth: 11/25/1964

To Whom It May Concern:

Mr. Smith has been under my care since 08/11/2004, because of his current mental condition, I strongly recommend that Mr. Leroy Smith be accompanied by a Field Representative of his choice to assist him during the interview coming up next week at the Federal Penitentiary with an Internal Affairs Investigator. I am fearful that his condition will worsen without assistance of a Field Representative at the interview.

Please feel free to call me after HIPAA Privacy Act guidelines are

Thank you kindly for your assistance.

Very Truly Yours,

M.Daisy Ilano MD
Psychiatrist

December 7, 2004

To: Harley G. Lappin, Director
320 First Street, N.W. Room 654 HOLC Building
Washington, DC. 20534

Re: Information

On December 10, 2004, at approximately 1:05 p.m., I was brought in to the Warden's staff lounge by Mr. Hourigan's Supervisor to begin the interview process. Mr. Hourigan's Supervisor first stated, I would like to introduce ourselves, only Mr. Hourigan and I are required to show our credentials and when we go around the table everyone else will introduce themselves. I asked Mr. Hourigan's Supervisor if I could get everyone's full names, title, and who they represent on paper for my own records. Mr. Hourigan's Supervisor denied my rest and stated it wasn't necessary. Mr. Hourigan's Supervisor then asked if I have any other questions. I replied, yes, I would like to know if anyone here is representing the agency in any other capacity. Mr. Hourigan's Supervisor replied, No. Mr. Hourigan's Supervisor again asked if I have any other questions before we begin. I replied, yes, am I to believe this is not a criminal investigation. Mr. Hourigan's Supervisor replied, Yes, these is a fact finding interview. I then asked Mr. Hourigan's Supervisor that I would like to be provided the FORM-B (Administrative Investigation) for him and I to sign before I begin answering any questions, which this entitles me assurance that I will not be criminally prosecuted. Mr. Hourigan's Supervisor stated, were not going to provide you the form, again this is just a fact finding interview. During this interview I requested a copy of a document, which Mr. Hourigan's Supervisor denied me again. Then minutes later he requests from me a copy of one of my documents, which I cooperated because I feared to say no. Everyone seems to be able to ask any question they want, receive anything they ask for, but I'm being denied by Mr. Hourigan's Supervisor for anything I request. I informed Mr. Hourigan's Supervisor that a fact finding interview shouldn't take two OIA Investigators, two attorney's, three experts in the field, which is very intimidating for one person without any representation.

Sincerely,

/S/
Leroy A. Smith Jr.
BOP Employee

cc: The Honorable Dennis Cardoza - Attn: Mike Jensen, Senior Field Representative
Attorney Generals Office
Matthew Glover, Office of Special Counsel
Joseph E. Gunja, Western Regional Director

Subj: **your email to the Director**
Date: 12/8/2004 4:18:27 AM Pacific Standard Time
From: JVroegh@bop.gov
To: leroyatwater@aol.com

Your email to the Director dated 12/7/04, in which you discuss events that transpired on 12/10/04 (?) has been forwarded to the Chief of the Office of Internal Affairs.

Attachment #137a

Subj: **E-mail to the Director**
Date: 12/7/2004 6:51:30 AM Pacific Standard Time
From: jtdignam@bop.gov
To: leroyatwater@aol.com
CC: BOP5272@bop.gov

Dear Mr. Smith:

The Director has requested that I respond to your e-mail to him dated yesterday, December 6, 2004. I am responding by e-mail in order to expedite the process.

As you know, an investigative team led by the Office of Internal Affairs is in your area and will begin today their preliminary investigation into your complaints to the Office of Special Counsel (OSC) regarding the UNICOR program/factory at USP Atwater. The OSC has referred this matter to us for investigation and we plan to investigate your complaints fully and objectively. In order for us to do so, we respectfully request your cooperation in terms of providing all pertinent information during an interview with the investigative team. It is my understanding that an interview is scheduled for today. It has also been brought to my attention that you are on sick leave at this time, so please be advised we are not compelling you to be interviewed but do welcome your comments, perspective, and complaints should you choose to voluntarily participate in an interview today.

With regard to your request for a staff representative during the interview, our records indicate that you are a nonbargaining unit member. Unlike bargaining unit members, who have a right to a representative during an administrative investigation per the Labor Statute, 5 USC § 7114, nonbargaining unit members are not given this statutory right. In addition, the Labor Statute provides union representatives official time to represent bargaining unit staff, but there is no corresponding section in the Labor Statute affording this right to representatives of nonbargaining unit staff during administrative investigations. Therefore, it is neither necessary nor appropriate for you to have a staff representative during your interview. If you wish the team to interview other staff during the investigation, we ask that you provide their names and we will give your recommendations in this regard full consideration. If you are seeking an accommodation (a word which you used in your e-mail to the Director) as a result of a disability by requesting a staff representative, more information will be needed for the agency to make an informed decision on this matter. Please let me know if this is the case.

You also request permission to accompany the team on a tour of the USP Atwater UNICOR program/factory which is scheduled this morning. Their tour this morning is intended for team members to see the layout of the UNICOR operation before beginning their work. If you believe you need to accompany OIA staff members on a tour through the UNICOR factory to provide them with useful and pertinent information which would be helpful in investigating your complaints, we welcome such a tour and will make arrangements for it. However, the date and time of this tour will be determined by OIA staff during their visit to the facility.

Finally, let me assure you again that we are committed to a comprehensive and objective investigation into your complaints, and we are bound to provide the results of the investigation to the OSC as expeditiously as possible. Therefore, I respectfully request your continued cooperation so that the issues you yourself have raised can be addressed appropriately.

Sincerely,

Attachment #138

/s/

John Dignam
Chief, Office of Internal Affairs
Federal Bureau of Prisons

Attachment #158a

I provided the additional information to support my request for accommodations's to have a staff representative during questioning, which was per Mr. Dignam request on December 7, 2004. **(See Attachment 139)** Mr. Ledesema and Mr. Hourigan polled me aside into an empty office in an aggressive and intimidating manner before the interview began that morning. They provided me a copy of a faxed memorandum from Mr. Dignam on December 8, 2004, addressing my request for accommodations's for a staff representative to be present during the fact finding interview and the tour to be conducted by the OIA Special Agents. Mr. Dignam then stated, "I consulted Dr. Jennifer Edens, a licensed clinical psychologist and the Bureau of Prisons Employee Assistance Program Coordinator, for an opinion as to the need for such an accommodation." He then stated, "She did state, however, that a reasonable and necessary accommodation would be for you to be accompanied by a staff representative or other individual who has sufficient mental health experience and qualifications." He also stated, "Therefore, please be advised that you are welcome to have a USP Atwater Psychologist or qualified Physician serve as a staff representative during your interview, or you can make arrangements for your Psychiatrist or any other mental health professional of your choosing to accompany you during the interview and tour." **(See Attachment 140 dated December 7, 2004)**

I sent an e-mail to Mr. Harley G. Lappin, Director Bureau of Prisons on December 8, 2004, which informed him of the content of the correspondence from Mr. Dignam. I informed Mr. Lappin, that I have someone appointed as my staff representative, which complies with Ms. Edens and Ms. Ilano's recommended accommodations without violating policy. I then informed Mr. Lappin, that I have been overly accommodating and cooperative with everything the investigators have asked me to comply with. Mr. Lappin nor his Executive staff responded to any of the concerns mentioned. **(See Attachment 141)**

During a break Mr. Ledesma and Mr. Hourigan stated, "you seem very passionate and censer about your career." Also, they stated, "that they noticed the experts in the field would bring issues to the table and I would shut then down without any rebuttal." They both stated, "we were discussing your work history which appears to be impeccable and asked each why would he report these concerns if they weren't true. I replied, you both are the first to ask and answer the same questions I've discussed with the Honorable Congressman Dennis Cardoza's Senior Field Representative. **(See Attachment 141 dated December 8, 2004)**

The following Bureau of Prison staff and other individuals that weren't interviewed:

1. UNICOR, Safety, and Correctional staff at FCI Elkton, Ohio
2. UNICOR, Safety, and Correctional staff at FCI Texarkana, Arkansas
3. UNICOR, Safety, and Correctional staff at FCI Marianna, Florida
4. UNICOR, Safety, and Correctional staff at USP Lewisburg, Pennsylvania
5. UNICOR, Safety, and Correctional staff at LaTuna, Texas.
6. Gregory Kapusta, Associate Warden
7. Victoria Pagan, Associate Warden
8. Steve Schwalb, Assistant Deputy Director of Industries
9. Joseph E. Gunja, Western Regional Director

Subj: **Re: E-mail to the Director**
Date: 12/7/2004 11:42:18 AM Pacific Standard Time
From: LEROYATWATER
To: jtdignam@bop.gov
CC: mcglover@osc.gov, MIKE.JENSEN@MAIL.HOUSE.GOV, pxxrodriguez@bop.gov

I want thank you and the Director for your quick response to my e-mail dated December 6, 2004.

In regard to my request asking for an accommodation for a staff representative be present during the walking through and the interview process was based off Ms. M. Daisy Ilano, MD, Psychiatrist recommendation, which I am currently being treated for mental health conditions associate with the ongoing retaliation, harassment, threats and hostile work environment by the executive staff, Central Office UNICOR staff, and Central Office Safety staff. Ms. Ilano's was fearful that my condition will worsen without assistance of a Field Representative at the interview. I will ensure you that I will be more than cooperative in terms of providing all pertinent information necessary to assist the investigative team, which you have clearly pointed out that the issues I have raised can be addressed appropriately by the OIA staff.

I again want to thank you for your consideration of my request.

Sincerely,

/S/
Leroy A. Smith Jr.
BOP Employee

Attachment #139

December 7, 2004

Dear Mr. Smith:

I received your e-mail in reply to my e-mail sent earlier today. I appreciate your willingness to cooperate in this investigation. As requested, you provided additional information as to the reason you need a staff representative present during your interview and tour as an accommodation. Specifically, you stated that you are "currently being treated for mental health conditions associated with the ongoing retaliation, harassment, threats and hostile work environment" and that your treating psychiatrist is "fearful that my condition will worsen without assistance of a Field Representative at the interview." I consulted Dr. Jennifer Edens, a licensed clinical psychologist and the Bureau of Prisons' Employee Assistance Program Coordinator, for an opinion as to the need for such an accommodation. Dr. Edens opined that having just any staff representative present during your interview was not a reasonable nor a sufficient accommodation given your psychiatrist's concerns. She did state, however, that a reasonable and necessary accommodation would be for you to be accompanied by a staff representative or other individual who has sufficient mental health experience and qualifications. Therefore, please be advised that you are welcome to have a USP Atwater psychologist or qualified physician serve as a staff representative during your interview , or you can make arrangements for your psychiatrist or any other mental health professional of your choosing to accompany you during the interview and tour. I trust this information is helpful.

Sincerely,

John Dignam
Chief, Office of Internal Affairs
Federal Bureau of Prisons

Attachment H 1/8

Subj: **Information**
Date: 12/8/2004 10:50:24 PM Pacific Standard Time
From: LEROYATWATER
To: hglappin@bop.gov
CC: mcglover@osc.gov, MIKE.JENSEN@MAIL.HOUSE.GOV, askdoj@usdoj.gov

December 8, 2004

To: Harley G. Lappin, Director
320 First Street, N.W. Room 654 HOLC Building
Washington, DC. 20534

Re: Staff Representative/Form-B

I received a memorandum from John Dignam, Chief, Office of Internal Affairs, Federal Bureau of Prisons dated December 7, 2004. Mr. Dignam spoke with Dr. Edens, a licensed clinical psychologist and the Bureau of Prisons Employee Assistance Program Coordinator, for her opinion about my staff representative accommodation based on my current mental health status. I understand that Dr. Ilano, Board Certified Clinical Psychologist and Director of Merced County Board of Health, expressed her concern of being fearful that my condition will worsen without assistance of a Field Representative at the interview. I believe Field Representative and Staff Representative are a play of word antics, which mean the same. This was to ensure that if I become anxious or have an anxiety attack or become disoriented during the interview my staff representative can ask for the interview to stop until I am able to resume. I would like to thank Mr. Hourigan and Mr. Ledesma for being very considerate towards this issue.

Ms. Edens opined that having just any staff representative present during your interview was not a reasonable nor a sufficient accommodation given my psychiatrist's concerns. Ms. Edens did state, however, that a reasonable and necessary accommodation would be for you to be accompanied by a staff representative OR other individuals who has sufficient mental health experience and qualifications.

If I read Ms. Edens recommendation that necessary accommodation would be for me to be accompanied by a staff representative or other individuals who has sufficient mental health experience and qualifications. I have a Notarized Representative Authorization Directive appointing Mr. Philip Rodriguez, Safety Specialist as my staff representative for Workers Compensation Cases, EEO Cases, Formal Bureau Investigation Cases, Formal Outside Agency Investigation Cases and All Legal or Litigation Cases, which was dated November 22, 2004, and provided to Mr. Jesse Gonzalez, Executive Assistant, USP Atwater. I believe this complies with Ms. Edens and Ms. Ilanos recommended accommodations, without violating policy. I have been overly accommodating and cooperative with everything the investigator have asked me to comply with.

Sincerely,

/S/
Leroy A. Smith Jr.
BOP Employee

cc: The Honorable Dennis Cardoza - Attn: Mike Jensen, Senior Field Representative
Attorney Generals Office
Matthew Glover, Office of Special Counsel
Joseph E. Gunja, Western Regional Director

Attachment #141

10. Harley G. Lappin, Director Bureau of Prisons
11. John Clements, Western Regional Safety Administrator
12. Charlie Carter, Counselor Victorville

The OIA investigation report is an conspiracy, obstruction, aiding and abetting, concealment, and failure to report any matter, which violates Law, Rule, or Regulation, Abuse of Authority, Discrimination and Retaliation. The OIA report always seems to point out misconduct or unprofessional conducts towards one particular management official. I believe OIA needs to look out their our own glass window before we cast the first stone and point at other top management officials for their own misconduct and unprofessional conduct by not stepping in to prevent or stop the violations of Law, Rule, or Regulation, Abuse of Authority, Discrimination, and Retaliation.

I identified, monitored, and provided technical advise and assistance to all Federal Prison Industries and Bureau of Prisons management officials from November 28, 2001 to present. To place me in the same sentence or breath with these management officials, which personally and professionally continue to try to discredit me for enforcing the safety and environmental health program and protecting the safety and health of staff, inmates, and staff families is a misleading and deliberately orchestrated denial of responsibility.

The analytical data results identifying OSHA exposure limits were exceeded at USP Atwater, FCI Elkton, and FCI Texarkana with glass breaking booths in place and an controlled environment clearly shows staff, inmates, and staff families were exposed to high concentrations of lead, cadmium, barium, beryllium, arsenic, mercury etc. above the OSHA exposure limits even at FCI Marianna, FCI La Tuna, and USP Lewisbergh. The hazardous metal exposure to staff, inmates, and staff families began in 1994 through 2005. The Federal Prison Industries was in noncompliance all these years and we are making lite of the exposure levels staff, inmates, and staff families received during this time, because were beginning to cleanup the mess Federal Prison Industries created. Again, the OIA report mentions there was insufficient evidence to establish this, which if they would of interviewed staff at FCI Elkton, FCI Texarkana, FCI Marianna, FCI La Tuna, and USP Lewisburgh they would found sufficient evidence that's criminal. OSHA and EPA makes it very clear that employers must assume the exposure limits are exceeded until proper air sampling and personal air sampling have been conducted to prove otherwise.

I received a copy of the Institution Character Profile (ICP) working papers conduct at USP Awater around April 2005. This document was provided to all department heads to review and correct deficiencies in their areas. A consensus of the ICP team and the Regional Director was staff in general are not holding inmates accountable for their property, sanitation, work performance, and movement of contraband. It appears as though this is a defined culture to insure inmates are not upset ans "rock the boat". The institution was required to provide a plan or action to the Regional Director in writing by May 5, 2005. The institution still hasn't been provide a final copy of the report signed off by the Regional Director.
(See Attachments 142, 142a, 142b, 142c, 142d, 142e, 142f, & 142g)

- ☐ * Mainline visibility was inadequate during morning and evening meals

- ☐ * There is a major problem with the manufacture of intoxicants and intoxicated inmates, and no program or procedure has been developed and implemented to properly deal with and manage inmates who pose problems for staff and fellow inmates relating to these issues

- ☐ * Cell sanitation and property was a major concern in general population:

  - ✓ * Excessive property
  - ✓ * Food
  - ✓ * Buckets
  - ✓ * Barber kits (isolated)
  - ✓ * Homemade sports caps (isolated)
  - ✓ * Nude, explicit pin-ups
  - ✓ * Excessive Toilet paper
  - ✓ * Chairs with graffiti, nicknames, symbols (isolated)
  - ✓ * Cleaning materials
  - ✓ * Lights covered with colored paper or clothes
  - ✓ * Door windows covered
  - ✓ * Excessive commissary food items ("store operations")

- ☐ Unit mop closets were very dirty

- ☐ Inmates had way too much idle time, and are "starving" for more programs and work opportunities

OTHER ISSUES

- * Unit team staff or other departmental staff were not visible during evening mainline- in fact only one officer was present. Department Heads should be required to work either one early or late day per week.

- * Observations and interviews of unit team staff and unit officers revealed unit staff rarely make rounds of the unit. One unit manager stated he and his team only inspects inmate cells during or after an inmate's team program review

- * Unit officers are not holding inmates accountable via searches of their cells and persons, as well as restricting personal property in their cells

- * A consensus of the ICP team and the Regional Director was staff in general are not holding inmates accountable for their property, sanitation, work performance, and movement of contraband. It appeared as though this is a defined culture to insure inmates are not upset and "rock the boat"

- * Less than 1% of inmates were observed pat searched coming out of the dining room during all meals- and metal detector screenings were improper. This validated why many inmate cells had food items in their cells

- * Housing unit officers were never observed pat searching any inmates

- ❑ * Several offices had blinds over windows, some of which were closed

- ❑ Inmates receiving common-fare meals were allowed to take the prepared meals out of the dining room

- ❑ * Facilities and other workers are not allowed to possess any tools or perform work, even with class B tools, and preventive maintenance and repair of equipment is inadequate and severely behind schedule. Food service equipment is suffering the most.

- ❑ * The SHU Meeting was unorganized and ineffective:

  - ✓ * Most staff in attendance had poor knowledge of all inmates in SHU, and there was no manager assigned to insure there was an effective system of oversight or quality control
  - ✓ * The chief psychologist did not offer any information on any inmate
  - ✓ * The SHU report was in disarray and had outdated and/or inaccurate information
  - ✓ * The SHU lieutenant had limited or no knowledge of approximately 50% of inmates housed in SHU
  - ✓ * In light of the aforementioned issues, it became more understandable why there is a significant issue with SHU overcrowding and the need to utilize a SHU Overflow Unit

- ❑ A minimum security inmate who arrived as a self-surrender 3-4 days ago had not received appropriate intake screening.

- ❑ * There were many serious and significant, as well as staff safety, issues in SHU. In essence, SHU is completely out of control and needs immediate attention and corrective action:

  - ✓ * Most cells had severe excess property and junk (books, magazines, clothing, personal property, food, toilet paper, trash bags, cleaning supplies, homemade shelves, duct work, caulked and sealed items, electrician tape, cups, etc.)

  - ✓ * Nearly every cell had an exuberant amount of sexually explicit and/or nude pin-ups on most walls, as well as on the bottom of the upper bunk

  - ✓ * Several cells had homemade exercise equipment in the cell or attached to beds. For example water bag weights, dip bars (made from broom handles), pull-up ties, etc.

  - ✓ * Over 50% of lights were covered, and it was impossible to conduct a true safety and well-being assessment of each inmate

  - ✓ * Several door windows were covered

  - ✓ * Many cells had inappropriate gang and other graffiti on the walls

✓ * While a review of the 30-minute check log revealed checks were being conducted, observations and video review indicating they are not being done (or they are conducted improperly). For instance, staff were observed walking down range and not looking into cells, staff looked into cells but windows or lights were covered, and the checks were not conducted every 30-minutes or twice per hour.

✓ * Unit team staff have not been properly making rounds and conversing with their inmates. In some instances, the staff members signed the visitor log, but never walked down any range. Several inmates have complained about this issue, and further review indicated this was a substantiated complaint.

✓ * SHU orderlies were observed on ranges while inmates were being escorted in restraints

✓ * It has become somewhat standard practice for inmates to be cuffed in front

✓ * Staff are not always properly controlling inmates in restraints during escort

✓ * An empty cell revealed a section of the bed frame had been cut-out, which would have produced several homemade knives. In addition, management must insure the device which was used to cut out these weapons has been removed (or properly controlled).

✓ * Fire extinguishers had not been inspected for over one year

✓ * There was no 21-day cell rotation procedure in-place. There is no cell rotation log being utilized, and a review of 10 inmates in SHU via SENTRY revealed they were rotated from 5-9 months

✓ * SHU orderlies are not being properly rotated

✓ * The grille door separating outside recreation and the main SHU was observed unsecured three separate times

✓ * Inmates in outside recreation were allowed to sit or lay on the upper landing of the recreation pen sally-port

✓ * Inmates participating in outside recreation were allowed to take personal property with them (cups and mugs)

✓ * In light of some of the aforementioned issues, it is apparent cells are not being searched in a timely or effective manner. Therefore, all cells must be searched as outlined with national policy

✓ * The SHU Lieutenant is not insuring staff are adhering to all operational security procedures and abiding by national policy. In addition, he is not addressing issues in which staff take shortcuts which have the potential of resulting in serious injury or death to staff or inmates.

✓ * Staff who do not abide by policy or local post orders relating to security and staff/inmate safety are not being held accountable by either formal counseling, performance log entries, and/or disciplinary action.

- * The Regional Office recently transferred over 150 inmates from SHU and the SHU Overflow Unit to alleviate overcrowding, and the SHU Overflow Unit is still being utilized. This unit needs to be terminated for SHU bed-space as soon as possible, and either used as a special management program or for general population.

NOTE: Areas or issues with a highlighted * indicates areas which require a plan of action to the Regional Director in writing by May 5, 2005. In addition, the Regional Director and Deputy Regional Director will be returning to the institution in approximately 45 days to assess and insure improvements have been made.

It would be hard for anyone to conduct an investigation when management officials shred documents that are crucial evidence to anyone's allegations of wrong doing. **Deposition of Mr. Stahley April 21, 2005,** (Mr. Dryovage) (Page 61) **Q.** And do you know where those documents are that were provided to him (Mr. Novicky)? (Mr. Stahley) **A.** When I moved from inside the institution out to the outside, I shredded probably 15 bags of memos and letters and stuff throughout the years. **Q.** Did this contain information about the decisions and processes that were being used in the recycling program? **A.** That is possible, yes. **Deposition of Mr. Luna April 21, 2005**, (Ms. Dryovage) (Page 10) **Q.** And in your office do you have documents concerning the glass breaking program? (Mr. Luna) **A.** No, I don't. **Q.** Do you have documents concerning your supervision of Mr. Smith? **A.** No, I don't. **Q.** Where are those documents kept? **A.** Everything that I had was given to Mr. Booth who is now he – who is the supervisor of Mr. Smith. **Q.** And when did you give the documents to Mr. Booth? **A.** When the transfer was done between Mr. Booth and myself. (Page 11) **Q.** Now, did you shred any documents when you transferred out of being Mr. Smith's supervisor? **A.** No, I didn't. (Page 17) **Q.** And who maintained the files for all of these responsibilities? **A.** I do. **Q.** And so when you left, all of your files were given to the person who took your job? **A.** Correct. **Q.** And nothing was destroyed? **A.** Not that I'm aware of, no. **Deposition of Mr. Booth April 21, 2005**, (Ms. Dryovage) (Page 10) **Q.** Now, at some point you were assigned to be the supervisor of Mr. Smith, were you not? (Mr. Booth) **A.** Correct. **Q.** And when was that? **A.** February of 2003. **Q.** And did you get any documents from his prior supervisor? **A.** Yes. **Q.** What – can you describe the documents that you received? **A.** Performance log entries and yearly appraisal forms for Mr. Smith. **Q.** Did you get a pile of documents or just a few pieces of paper? Could you describe what was given to you? **A.** Yes. It was a six-part file folder that had information regarding Mr. Smith's performance. **Q.** And did you get them personally from Mr. Luna? **A.** Yes. **Q.** Were there any other documents t hat you got from Mr. Luna? **A.** No. I don't recall any other documents at this time. **Deposition of Mr. Schultz June 8, 2005**, (Ms. Dryovage) (Page 67) **Q.** Now, did Mr. Stahley inform you of what documents that he shredded? (Mr. Schultz) **A.** My only recollection is is that Mr. Sthaley indicated that he shredded a lot of documents when he left the factory and went to his current position.
(See Attachments 143, 143a, 143b, 143c, 143d, 143e, & 143f)

I believe the OIA investigation report is in noncompliance, which this case should go in front of and Congressional Oversight Committee and to hold the staff responsible that falsely informed other staff that there were no dangers working with Computer Processing Units and Cathode Ray Tubes (Computer Monitors). Federal Prison Industries management officials were knowingly and wilfully violated the law and endangering the staff, inmates, and staff families for production and profit. The following needs to happen to allow the healing process to move forward:

1. Federal Prison Industries and Bureau of Prisons take full responsibility for their lack of actions to protect the staff, inmates, and staff families from exposure to lead, cadmium, barium, beryllium and other hazardous metals, which will cause health condition over time like Asbestos.
2. Congress needs to strengthen the Whistleblower Protection Act such as:

   A. Give more resources to conduct investigations.
   B. Give investigation authority to the Office of Special Counsel Disclosure Unit.
   C. Develop sever punishment guidelines towards agencies who retaliate, harass,

Q. Do you have those at home?

A. No.

Q. Where?

A. We never wrote them -- I mean that was like when we changed the boothing, like we put air this or that, we put bigger motors on the exhaust, those type of things. So that's what he wanted. He wanted to know what we were doing.

Q. And do you know where those documents are that were provided to him?

A. When I moved from inside the institution out to the outside, I shredded probably 15 bags of memos and letters and stuff throughout the years.

Q. And why did you do that?

A. I didn't have a need for that stuff.

Q. And can you describe more specifically what all you shredded with respect to the --

A. Last ten years of my career.

Q. Did that contain information about the decisions and processes that were being used in the recycling program?

A. That is possible, yes.

Q. The next sentence of this e-mail to you Mr. Novicky states, quote, No further testing is to be performed of any kind until this documentation is

Q. Did you receive a copy of the document request?

A. No, I haven't.

Q. Did the agency ask you to provide any copies of documents that you have that are relevant --

A. No.

Q. -- to the case?

A. No, no one has.

Q. And in your office do you have documents concerning the glass breaking program?

A. No, I don't.

Q. Do you have documents concerning your supervision of Mr. Smith?

A. No, I don't.

Q. Where are those documents kept?

A. Everything that I had was given to Mr. Booth who is now the -- who is the supervisor of Mr. Smith.

Q. And when did you give the documents to Mr. Booth?

A. When the transfer was done between Mr. Booth and myself.

Q. And do you recall the month and year of that?

A. No, I sure don't.

Q. And why was it that your supervisor authority over Mr. Smith was changed from you to Mr. Booth?

A. Mr. Smith requested it.

Q. And do you know why he requested it?

A. He had some problems with the way I managed him.

Q. And do you have any documentation about your interaction with him?

A. No, I don't.

Q. Now, did you shred any documents when you transferred out of being Mr. Smith's supervisor?

A. No, I didn't.

Q. You keep copies of the e-mails that you send, do you not?

A. No, I don't.

Q. Are they on your computer?

A. Well, I mean I left Atwater almost a year ago. So that would be on the computer here. It would not be on my computer at San Diego.

Q. And you didn't delete anything on the computer that you left here at Atwater?

A. Yes, I did.

Q. You did delete --

office, human resources, safety, health services facilities and medical, and employee development.

Q. And then do you also have other employees that work directly for you?

A. No.

Q. So you didn't have a clerical support or administrative support staff?

A. No. I used the warden's secretary.

Q. And who maintained the files for all of these responsibilities?

A. I do.

Q. And so when you left, all of your files were given to the person who took over your job?

A. Correct.

Q. And nothing was destroyed?

A. Not that I'm aware of, no.

Q. At some point did you meet Mr. Smith? At some point in your career?

A. Other than Atwater?

Q. Well, when did you first meet Mr. Smith?

A. When he arrived at the institution. I don't remember the specific date.

Q. And he reported directly to you so you did his performance appraisals?

A. Sure.

MS. NAVARRO: Can we just go off the record a second?

(Off-the-record discussion.)

BY MS. DRYOVAGE:

Q. Back on the record. So that the record's clear, have you received a copy of appellant's second request for production of documents, the first set of requests for admissions and the first set of interrogatories?

A. Yes, ma'am.

Q. And you were asked to provide answers or to assist the agency in answering those discovery requests?

A. Yes.

Q. Now, at some point you were assigned to be the supervisor of Mr. Smith, were you not?

A. Correct.

Q. And when was that?

A. February of 2003.

Q. And did you get any documents from his prior supervisor?

A. Yes.

Q. What -- can you describe the documents that you received?

A. Performance log entries and yearly

appraisal forms for Mr. Smith.

Q. Did you receive any other documents from

that I received the file in April or May of '03, after the completion of the yearly appraisal.

BY MS. DRYOVAGE:

Q. Did you get a pile of documents or just a few pieces of paper? Could you describe what was given to you?

A. Yes. It was a six-part file folder that had information regarding Mr. Smith's performance.

Q. And how thick was the document stack?

A. Maybe a half inch, three quarters inch in thickness.

Q. And did you get them personally from Mr. Luna?

A. Yes.

Q. Were there any other documents that you got from Mr. Luna?

A. No. I don't recall any other documents at the time.

Q. Did you receive any documents that

concerned the health and safety issues that Mr. Smith was raising?

A. I don't believe so. No documents. No, I don't recall.

Q. At some point did you learn that Mr. Smith had raised concerns that the agency was in violation of the OSHA regulations with respect to the glass breaking program?

A. Mr. Smith was a safety manager for USP

Q. For the staff at Atwater.

A. There was a program in effect for staff and inmates, I believe.

Q. And are you aware of the document retention policy at the Department of Justice for records that are maintained concerning health and safety of employees?

A. No.

MS. DRYOVAGE: We'll break for a second.

(Brief interruption.)

BY MS. DRYOVAGE:

Q. Now, did Mr. Stahley inform you of what documents that he shredded?

A. My only recollection is is that Mr. Stahley indicated that he shredded a lot of documents when he left the factory and went to his current position.

Q. That's a position with UNICOR?

A. Yes.

Q. And did he tell you why he shredded lots of documents?

A. No.

Q. And what is your understanding of the reason why he moved from being an employee of the Bureau of Prisons to an employee of UNICOR?

attached # 105-f

or fire an employee that comes forward about violations of law.

D. Develop sever fines, disciplinary action, or prison time to Agency leaders or other staff who violate the law that's covered under the whistleblower act.

E. Give Administrative Judges broader authority to grant remedies immediately to prevent unlawful conduct or disciplinary action taken against a whistleblower by the Agency.

Finally, I am the Safety Manager with the Federal Bureau of Prisons, at United States Penitentiary (USP) and Federal Prison Camp (FPC), Atwater, California, GS-12, who was retaliated, threatened, coerced, interfered, and discriminated against for blowing the whistle on protected disclosures. I have been employed by the Federal Bureau of Prisons for nearly 14 years, he has had an impeccable career with no prior disciplinary action against him or any negative evaluation log entries, was rated **"Outstanding"** for his performance in FY 2005, FY 2004, FY 2003, FY, 2002, and FY 2001. I am responsible for coordinating the Initial Occupational Safety and Environmental Health Program Review audit for USP and FPC Atwater, which received an **"Superior"** rating and Co-Chairperson for the Initial American Correctional Accreditation audit at USP Atwater, which received an **99.7%**. I severed as a mentor for the Institution Staff Mentoring Program and the Selective Placement Program Manager (Americans and Veterans with a Disability). I am responsible for 400 staff and 1500 inmates in participating and conducting training of the Occupational Safety and Environmental Health Program. I am also responsible for auditing 14 Departments and 200 inmate work details, to ensure compliance with the Bureau's Occupational Safety and Environmental Health Program Manual, OSHA Guidelines, EPA Regulation, JACOH, and Life Safety Codes. He has faced opposition from Institution Executive staff, Federal Prison Industries (UNICOR), and Health Service Division Safety, which he diligently ensured the safety and health staff and inmate workers, which included refusing to allow violations of the Bureau Occupational Safety and Environmental Manual, OSHA and EPA Federal , State, and local regulations, which actions would be considered criminal intent.

Why would anyone with fourteen (14) years and an impeccable record file under the Whistleblower Protection Act, if there was no merit to the three and half (3 ½) years of maintaining correspondence, personal memorandums, exposing executive staff misconduct, unprofessional conduct, safety and environmental health concerns, and environmental concerns associate with the CRT's. My career has been adversely effected by the filing under the whistleblower protection act. If I am the cause of these problems then why haven't I received disciplinary action in the past or present, which I recently received an "Outstanding" annual evaluation rating, when missing six months out of the year?

I complained the threats, retaliation, intimidation, coercion, demeaning and Discriminatory comments, abuse of authority, and denied promotion was because of 1) my protected disclosure of endangering the safety and health of public, staff, and inmate workers Bureau Wide Federal Prison Industries (UNICOR); 2) my protected disclosure under the Whistleblower Protection Act; 3) my protected disclosure with OSC; 4) my protected disclosure with EEO and EEOC; 5) my protected disclosure with The Honorable Congressman Dennis Cardoza; 6) my protected disclosure with the Attorney General John Ashcroft and Alberto Gonzales; 7) my protected

disclosure with OSHA and subsequent MSPB Appeal.

I have been subjected to threats of negative log entries, disciplinary action, physical violence, threats, and intimidation, profane, obscene, and otherwise abusive language, and demeaning actions, which resulted in severe health problems and necessitated taking sick leave on February 19, 2003, and October 6, 2004 to present. Mr. Jesse Gonzalez threatened me with AWOL status on November 6, 2004, placed me on AWOL on March 6, 2004, threatened with disciplinary action, up to and including removal if I did not substantiate his illness or return to work full duty.

I would like to thank the Office of Special Counsel for their continued support and for giving me the opportunity to respond to the Agency's report. I have requested a reassignment for my wife and I. This will allow my family to rebuild and get a knew start away from the current issues being addressed at all levels. This also will allow me to recover faster and rebuild my relationship with my family.