U.S. OFFICE OF SPECIAL COUNSEL
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Washington, D.C. 20036-4505

April 3, 2006

The Special Counsel

The President
The White House
Washington, DC 20500

Re: OSC File No. DI-04-2815

Dear Mr. President:

Despite a stated policy of "provid[ing] a safe and healthful environment for all employees and inmates," the Federal Bureau of Prisons (BOP) and Federal Prison Industries, Inc. (FPI) managers recklessly, and in some cases knowingly, exposed inmates and staff to unsafe levels of lead, cadmium, and other hazardous materials over a period of years. BOP Program Statement 1600.08(1)(A). Leroy A. Smith, Jr., a Safety Manager at BOP, disclosed to the Office of Special Counsel (OSC) that inmate workers and civilian staff members were being exposed to these materials in computer recycling facilities at United States Penitentiary Atwater, California (USP Atwater) and other BOP institutions. According to the Occupational Health and Safety Administration (OSHA), overexposure to such toxic materials can cause cancer, kidney disease, disruption of the blood-forming system, damage to the central nervous system, impairment of the reproductive system, or even death. 29 C.F.R. §§ 1910.1025 App. A and 1910.1027 App. A. Mr. Smith alleged that BOP and FPI management discounted substantial evidence of the dangers associated with the computer recycling process and continued to operate recycling facilities without adequate safety precautions.

More specifically, Mr. Smith alleged that workers in the computer recycling facility operated by FPI at USP Atwater were being exposed to hazardous material released when Cathode Ray Tubes (CRTs) were broken as an integral part of the recycling process. Mr. Smith stated that air quality testing repeatedly revealed elevated levels of airborne lead and cadmium in the recycling facility. After each test, Mr. Smith contended, he would direct the suspension of operations and recommend the adoption of additional safety precautions. Mr. Smith alleged, however, that management personnel at USP Atwater and FPI abused their authority by repeatedly ordering the reactivation of operations in the recycling facility without implementing the safety measures he recommended and without the written approval of the safety department. In addition, Mr. Smith disclosed that BOP and FPI located a food service area in the recycling facility at USP Atwater despite the fact that it was exposed to the toxic materials in violation of 29 C.F.R. § 1910.141(g)(2). Finally, Mr. Smith disclosed that in the course of his attempts to address safety concerns associated with the recycling facility at USP Atwater, he learned that similar dangers to safety existed in recycling facilities located at other BOP institutions throughout the country.

I required the Honorable John Ashcroft, former Attorney General of the United States, to conduct an investigation into Mr. Smith's disclosure pursuant to 5 U.S.C. § 1213(c) and (d). Attorney General Ashcroft delegated responsibility for investigating Mr. Smith's allegations to

Harley G. Lappin, Director of the Bureau of Prisons. Director Lappin produced a report to OSC on June 13, 2005, and in response to a request for additional information, BOP filed a supplemental report with OSC on August 4, 2005. OSC forwarded the agency's initial and supplemental reports to Mr. Smith for comment.

Taken together, the agency's reports substantiate some of Mr. Smith's allegations but ultimately conclude that "BOP[,] FPI and Safety Staff appear[ed] to have adequately addressed" the safety concerns raised in Mr. Smith's disclosure. According to the agency, BOP and FPI staff actively engaged in efforts to mitigate or eliminate the dangers to safety associated with the recycling of CRTs once they became apparent. The agency found that BOP and FPI management and staff took "appropriate steps to ensure factories [were] operating safely."

Mr. Smith, however, vigorously disputed the agency's findings and provided OSC with extensive documentary evidence to support his account of events surrounding recycling activities at USP Atwater. Mr. Smith stated that BOP investigators failed to interview some witnesses in possession of relevant evidence, particularly with respect to recycling facilities at BOP institutions other than USP Atwater. Ultimately, Mr. Smith maintained in his comments that "Federal Prison Industries management officials knowingly and willfully violate[d] ... OSHA guidelines" and that BOP's investigation "was not impartial or comprehensive." As required by law, 5 U.S.C. § 1213(e)(3), I am now transmitting the agency's reports along with Mr. Smith's comments to you.

Having reviewed the agency's submissions and Mr. Smith's comments, I have determined that the agency's reports, taken together, contain all of the information required by statute, but, as discussed in the enclosed Analysis of Disclosure, I must conclude that findings in the agency's report appear unreasonable. In particular, the agency's reports made little effort to explain why documentary evidence that appears to contradict the agency's findings is unreliable or how this evidence can be reconciled with the conclusions of its investigation. Moreover, the agency's reports appear to rely on strained interpretations of applicable rules and procedures in order to justify past actions in connection with FPI recycling facilities, and the agency's investigation into conditions in recycling facilities at other BOP institutions appears to have been cursory at best. In light of these and other deficiencies, I cannot find the agency's reports reasonable within the meaning 5 U.S.C. § 1213(e)(2), and I am left to conclude that a thorough, independent, and impartial investigation into recycling activities at BOP institutions is still required.

As required by law, 5 U.S.C. § 1213(e)(3), I have sent copies of the agency's reports and the whistleblower's comments to the Chairmen of the Senate Committee on Commerce, Science, and Transportation and the House Committee on Science. We have also filed copies of the agency's reports and the whistleblower's comments in our public file and closed the matter.

Respectfully,

Scott J. Bloch

Enclosures