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October 27, 2009

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-08-0523

Dear Mr. President:

The Office of Special Counsel (OSC) received disclosures from Mr. Leroy Smith, Complex Safety Manager, Department of Justice (DOJ), Federal Bureau of Prisons (BOP), Federal Correctional Institution (FCI), Tucson, Arizona (FCI Tucson). Mr. Smith, who consented to the release of his name, alleged that inmates and employees working at FCI Tucson and the Federal Prison Industries, Inc., (UNICOR) recycling factory were exposed to hazardous materials such as lead, cadmium, carbon dust, and mold. Mr. Smith also alleged that FCI Tucson was not complying with the air circulation requirements of the American Correctional Association Standards (ACA Standards) when it increased the inmate cell occupancy rate from two to three inmates.

Pursuant to 5 U.S.C. § 1213(c) and (d), OSC requested the Honorable Michael B. Mukasey, former Attorney General, to conduct an investigation. Attorney General Mukasey delegated authority to Mr. Harley G. Lappin, BOP Director, to conduct the investigation and to review and sign the report. On January 30, 2009, Mr. Lappin submitted an agency report to OSC. On May 1, 2009, and May 28, 2009, OSC received attachments to the report from BOP, including analyses conducted by the Department of Health and Human Services' (DHHS) Federal Occupational Health Service (FOH), DHHS's National Institute for Occupational Safety and Health (NIOSH) and DOJ's Office of Inspector General (OIG).

The agency report found that BOP management had been responsive to environmental safety concerns. It reflects that BOP had conducted ventilation and environmental testing to determine the existence of hazardous material, such as carbon dust and black mold, both prior to Mr. Smith's appointment as a safety official and after Mr. Smith raised these safety-related concerns. The agency report reflects that although some contaminants were found, BOP responded appropriately to safety issues, and determined that there was no imminent harm or threat to employees or inmates. Furthermore, the agency found that it had complied with or exceeded air recirculation levels in prison cells. Even so, the agency has conducted additional environmental and air ventilation tests in order to ensure that the facility continues to comply with environmental safety regulations and standards, including proper ventilation, identification and prevention of mold, and monitoring levels of hazardous materials.

During the course of investigating this matter, the agency ordered air samplings at FCI Tucson's recreation trailer and various administration buildings by Applied Environmental Services (AES). AES found that most of the spores were common outdoor molds, but also identified Bipolaris/Drechslera mold spores, which may cause a variety of health effects in people susceptible to allergies. Upon receiving the results from AES, BOP management closed the recreation trailer and affected building areas, and forwarded an emergency funding request for the removal of the trailers. In May 2007, the recreation trailers were removed. In September 2008, BOP management, under the direction of the FCI Tucson Warden Louis Winn, ordered the staff to repair the leaking roofs in affected areas. As of October 2009, all identified leaks have been repaired, including leaks in the Medical Building, the Financial Management Building, the Commissary, the Facilities Building, the Safety Building, the Palo Verde housing units building, and the Warden's complex.

The agency report also reflects that FCI Tucson had previously requested additional funding for several years to fix the leaky roofs, the likely cause of the mold, but funding had been denied. Leaks, at that time, were fixed within the constraints of approved budgets, yet this was a reoccurring problem. During the course of the OSC-referred investigation, a new building was being erected to replace the recreation trailer. The target completion date is December 1, 2009.

Regarding the air circulation testing in prison cells, the agency report found that despite previous air circulation testing results that demonstrated ventilation was within acceptable standards, the Warden had ordered new air circulation tests based on Mr. Smith's recommendation, after his appointment in March 2006. On March 8, 2007, the Science Applications International Corporation conducted a survey of ventilation and other environmental tests such as light and noise. Tests revealed that ventilation rates exceeded the industry standards in all assessed areas, including inmates' housing.

The agency report demonstrated BOP initiated environmental safety consultations with outside offices, including FOH, NOISH, and OIG. After environmental testing occurred, FOH concluded that: (1) OSHA and UNICOR results showed that inhalation exposure to lead, cadmium, and other toxic metals during recycling operations were below OSHA's permissible exposure limits (PELs); (2) a cadmium area result obtained by the UNICOR consultant showed cadmium exposure to be slightly above the action level, but below the PEL; and (3) surface contamination in the UNICOR factory can be controlled by implementing an operations and maintenance plan. Additionally, NIOSH's report emphasized that even though sampling results showed worker exposure to carbon dust was at extremely low or non-detectable levels, the agency should continue to test for hazardous material and proper ventilation to ensure employee and inmate safety.

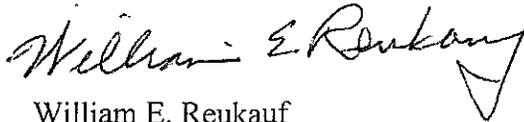
As a result of the investigation, the agency has continued to initiate and monitor testing results for hazardous materials and air circulation levels. Before December 2009, BOP will post a bid solicitation for outside ventilation analysis. Furthermore, BOP management has continued to monitor for any additional leaks in facility buildings to prevent mold.

Pursuant to 5 U.S.C. § 1213(e)(1), Mr. Smith had an opportunity to review and comment on the report. Mr. Smith was critical of the agency report, and felt more people should have been interviewed for the investigation. He stated that the presence of hazardous materials, even though below OSHA action levels, is a violation of the Bureau of Prisons Program Statement 1600.08, which states that the BOP's policy is to provide a safe and healthful environment for all employees and inmates. Mr. Smith emphasized that NIOSH policy states that an employer is required to protect employees even in the absence of specific OSHA Regulatory Standards. Mr. Smith added that the agency report regarding the ventilation testing was outdated, and emphasized that more environmental testing and management cooperation with safety employees were necessary. OSC is now transmitting the agency report and the whistleblower's comments in compact disc form to you.

OSC has reviewed the original disclosures, the agency report, and the whistleblower's comments. Based on that review, OSC has determined that the agency report contains all of the information required by statute, and that its findings appear to be reasonable.

As required by § 1213(e)(3), OSC has sent copies of the agency report and the whistleblower's comments to the Chairmen and Ranking Members of the Senate and House Committees on the Judiciary. If you would like paper copies of the report and the whistleblower's comments, please contact Catherine A. McMullen, Chief, Disclosure Unit, at 202-254-3604. OSC has also filed copies of the agency report and the whistleblower's comments in our public file and closed the matter. OSC's public file is now available online at www.osc.gov.

Respectfully,



William E. Reukauf
Associate Special Counsel

Enclosure