



Via Email to OHA.filings@hq.doe.gov and [Online](#)

August 31, 2024

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Director, Office of Hearings and Appeals
HG-1 / L'Enfant Plaza Building
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585-1615

Subject: Freedom of Information Appeal (FOIA HQ-2024-01160-F)

Dear Sir/Madam,

I am submitting this appeal to your office on the advice of Mr. Anthony Cruz of the DOE Office of Inspector General within 90 calendar days of receipt (June 4, 2024) of his last communication, dated May 31, 2024, pursuant to 10 CFR 1004.8. See third paragraph from end of ...

https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-05-31_HQ-2024-01160-F_Supplemental_Response.pdf

Over the last 20 months, I have submitted two complaints (including OIG 23-0160-C), a FOIA request (HQ-2024-01160-F), and numerous emails and letters to all levels of DOE management hierarchy, in an attempt to get answers regarding DOE's falsification of waste shipment records from the Energy Technology Engineering Center (ETEC) to EnergySolutions' low-level radioactive waste site in Clive, Utah in 2020-2021.

Frankly, after being stonewalled by ETEC management, EM management, the Office of Inspector General, the DOE FOIA Office, and Secretary of Energy Granholm, I do not anticipate that your Office will be forthcoming or fruitful. I am nevertheless going through the motions.

Be aware, that I also plan to pursue my complaint through federal channels other than the Department of Energy, namely the U.S. Congressional Committee on Oversight and Accountability. See the attached proposed draft of my whistleblower complaint below that



I will submit to the Oversight Committee if I do not receive a meaningful response from your office within 20 calendar days of the date of this letter.

The whistleblower complaint will also serve to provide you with a brief summary of my OIG complaint, and DOE's subsequent 20-month stonewalling. Please read the extensive supporting detail in the provided URLs.

Thank you for your attention and assistance in this matter.

Sincerely,

Phil Rutherford
President: Phil Rutherford Consulting

cc

Anthony Cruz	Assistant Inspector General	anthony.cruz@hq.doe.gov
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Planned Submission Date: September 23, 2024

**Draft Whistleblower Complaint to the
U.S. Congressional Committee on Oversight and Accountability
Falsification of ETEC Waste Shipping Records**

This complaint covers three phases, (1) re-defining of low-level radioactive waste, (2) falsification of waste shipping records, and (3) cover-up by Department of Energy (DOE) management.

Building Demolition

During 2020 and 2021, the DOE demolished several buildings at the DOE-operated Energy Technology Engineering Center (ETEC). These included (1) former nuclear and radiological facilities that had been decommissioned, surveyed and shown to meet federal and State cleanup standards, and “*released for unrestricted use*” by DOE, and (2) other buildings with no history of radiological use, that had also been surveyed and shown to meet federal and State cleanup standards, and be “*indistinguishable from background (IFB)*.”

Re-defining of Low-level Radioactive Waste

Nevertheless, the California Department of Toxic Substances Control (DTSC) forced the DOE to classify, manage, ship, and dispose of the demolition debris from these buildings, out-of-state, as low-level radioactive waste (LLRW), based on “*an abundance of caution*.” This effectively re-defined LLRW, implemented California Senate Bill, SB-1970 (2002) that had been vetoed by former Governor Gray Davis, and violated California Executive Order D-62-02. See more detail on this DTSC/DOE agreement at ...

https://philrutherford.com/Personal_Communication/Letter_to_Becker_2020-11-29.pdf

Request for Waste Shipping Records (EMCBC-2022-00149-F)

In November 2021, a FOIA request (EMCBC-2022-00149-F) was submitted for the shipping records of this demolition debris (including EnergySolutions waste profiles and Nuclear Regulatory Commission (NRC) 540/541 LLRW manifests). DOE provided these records in September 2022. A subsequent review of these records revealed a systematic falsification of radionuclide data.



Complaint to DOE Management

On January 10, 2023, a complaint was submitted to the DOE management hierarchy (including Secretary Granholm), providing detailed evidence of this data falsification. No response was received. See this complaint at ...

https://philrutherford.com/SSFL/doe_building_demolition/FOIA/Response_to_FOIA_Data_Package_Revised.pdf

Complaint to DOE Office of Inspector General (23-0160-C)

Subsequently, on February 10, 2023, a complaint was submitted to the DOE Office of Inspector General (OIG). The complaint was assigned a tracking number 23-0160-C. See the complaint at ...

https://philrutherford.com/SSFL/doe_building_demolition/FOIA/DOE_IG_Letter_2023-02-10.pdf

A full year later, on February 8, 2024, following a random status request, I was notified by DOE OIG that the investigation had been closed at an earlier unspecified date, without my notification. The DOE OIG stated that “*no further action was warranted*” without any justification provided for that conclusion. The DOE OIG further stated that it could not provide to me any information on its investigation, and that a FOIA request would need to be submitted to the DOE FOIA Office.

FOIA Request for OIG Investigation Records (HQ-2024-01160-F)

On February 8, 2024, a FOIA request was submitted to DOE’s FOIA Office. A tracking number of HQ-2024-01160-F was subsequently assigned. See the FOIA request at ...

https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-02-08_FOIA_Request_for_File_on_OIG_Complaint_23-0160-C.pdf

Subsequent communications from Mr. Anthony Cruz of the DOE OIG Office failed to (1) provide responses or denials to the specific allegations of the original DOE complaint and the DOE OIG complaint 23-0160-C, and (2) provide responses to the specific requests of FOIA HQ-2024-01160-F. See communications from OIG below ...

https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-03-26_Final_Response_Letter_HQ-2024%2001160-F.pdf (March 26, 2024)

https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-05-31_HQ-2024-01160-F_Supplemental_Response.pdf (May 31, 2024)



https://philrutherford.com/SSFL/dae_building_demolition/FOIA/2024-05-31_HQ-2024-01160-F_Supplemental_Response_Documents_5_through_34.pdf (May 31, 2024)

These communications did reveal that ...

1. On March 16, 2023, OIG requested a 30-day response to the complaint from Mr. William White (Senior Advisor for the Office of Environmental Management (EM)) https://philrutherford.com/SSFL/dae_building_demolition/FOIA/2023-03-16_Memo_to_EM-1.pdf
2. On July 14, 2023, following several extension requests, Mr. Timothy Harms sent EM's response (identified as Document 4) to OIG. Based on this response OIG determined that *"no further action was warranted."*
3. On or before March 16, 2024, OIG referred Document 4 to EM for *"a determination concerning its releasability."*

My responses, including further questions to Mr. Anthony Cruz (OIG) are provided below ...

https://philrutherford.com/SSFL/dae_building_demolition/FOIA/2024-03-30_FOIA_HQ_2024-01160-F.pdf (March 30, 2024)

https://philrutherford.com/SSFL/dae_building_demolition/FOIA/2024-06-09_Response_to_Anthony_Cruz_FOIA_HQ-2024-01160-F.pdf (June 9, 2024)

Summary

This sad story started when DOE capitulated to a state agency (DTSC) to re-define low-level radioactive waste which led to falsification of waste shipping records.

As of the date of this whistleblower complaint to the Oversight Committee, EM's response to OIG Complaint 23-0160-C (Document 4) has still not been provided. OIG has had Document 4 in its possession, over fourteen months since July 14, 2023. EM was asked by OIG to release Document 4 before March 16, 2024, over six months ago.

The original allegations of the complaint to DOE, the 23-0160-C complaint to the DOE OIG, and the requests in FOIA HQ-2024-01160-F have been ignored, stonewalled, and obfuscated. None of the communications from DOE have addressed the specific allegations of the complaints, or even attempted to dispute them. All levels of management from DOE ETEC management, the DOE Office of Inspector General, the DOE FOIA Office, the DOE Office of Environmental Management, Mr. William White (former EM-1), and Secretary of Energy, Jennifer Granholm appear to be complicit in a deliberate 20-month cover-up.



A full timeline of communications with DOE on this matter is available at ...

<https://philrutherford.com/ssfl.html#wastefoia>

More detail on DTSC's and DOE's re-defining of LLRW may be found in Section 23.0 of ...

https://philrutherford.com/SSFL/Nuclear_Decommissioning_at_SSFL.pdf#page=86

More detail on the falsification of data and cover-up by DOE may be found at in Section 23.4 of ...

https://philrutherford.com/SSFL/Nuclear_Decommissioning_at_SSFL.pdf#page=99

I suggest that the URLs in this complaint be read chronologically to understand the full complexity and import of (1) the re-defining of LLRW, (2) the subsequent falsification of shipping records, and (3) the final extended cover-up.