



Via Online [Whistleblower Portal](#) to Chairman Comer, Ranking Member Raskin and [Online](#)

September 23, 2024

Phil Rutherford Consulting
8655 Delmonico Ave
West Hills, CA 91304-1303
+1 (818) 912-1501
email@philrutherford.com

Representative James Comer, Chairman
Representative Jamie Raskin, Ranking Member
House of Representatives
Committee on Oversight and Accountability
2157 Rayburn House Office Building
Washington, DC 20515-6143

Subject: Whistleblower Complaint - Falsification of Waste Shipping Records from the Department of Energy's Energy Technology Engineering Center (ETEC)

Dear Chairman Comer and Ranking Member Raskin,

I am submitting this whistleblower complaint to you and your Committee regarding egregious activities/behavior by the Department of Energy (DOE).

Over the last 20 months, I have submitted two complaints to the DOE (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.

To date, DOE has failed to provide any response to the specific allegations of my complaints and failed to respond to the specific requests in the FOIA request.

The following attachment is a brief timeline of events, together with online URL links to communications providing extensive detail of the complaints and FOIA requests, and DOE's continued stonewalling.



In the greater scheme of things, this issue does not rise to the level of importance of other issues that face our nation. However, if a major arm of the U.S. Government cannot do the small things right, how can it be held accountable for the larger things?

Thank you for your attention and assistance in this matter. If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

Phil Rutherford
President: Phil Rutherford Consulting

cc

Anthony Cruz	Assistant Inspector General	anthony.cruz@hq.doe.gov
Alexander Morris	FOIA Public Liaison	alexander.morris@hq.doe.gov
William White	Ex-Senior Advisor to EM	william.white@hq.doe.gov
Timothy Harms	Senior Advisor to RM	timothy.harms@hq.doe.gov
Candice Robertson	Senior Advisor to EM	candice.robertson@hq.doe.gov
Jennifer Granholm	Secretary of Energy	The.Secretary@hq.doe.gov
Joshua Mengers	ETEC Project Director	joshua.mengers@emcbc.doe.gov
Carrie Meyer	EM Comms Director	carrie.meyer@hq.doe.gov
DOE OIG FOIA Team		foiaoig@hq.doe.gov
IGHotline		ighotline@hq.doe.gov
FOIA-Central		FOIA-Central@hq.doe.gov
Jordan O'Donnell	IGHotline	jordan.odonnell@hq.doe.gov
Jennifer Bacon	FOIAOIG	Jennifer.bacon@hq.doe.gov
Ben Yenerall	DOE OHA	ben.yenerall@hq.doe.gov
DOE Office of Hearings and Appeals (OHA)		OHA.filings@hq.doe.gov
Steven Becker	DTSC SSFL Director	steven.becker@dtsc.ca.gov
Mindy Mathias	DTSC SSFL Prog. Manager	mindy.mathias@dtsc.ca.gov
Jamie Slaughter	DTSC SSFL Comm. Affairs	jamie.slaughter@dtsc.ca.gov
Tanya Brosnan	DTSC SSFL DOE Activities	tanya.brosnan@dtsc.ca.gov
Meridith Williams	DTSC Director	meredith.williams@dtsc.ca.gov



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

September 23, 2024

This complaint covers three issues of egregious actions and behavior by the U.S. Department of Energy (DOE),

- (1) re-defining of low-level radioactive waste,
- (2) falsification of waste shipping records, and
- (3) apparent cover-up by DOE management.

Building Demolition

During 2020 and 2021, the DOE demolished several buildings at the DOE-owned 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 the 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 shown to 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 was done via the 2020 Amendment to Order on Consent.¹

¹ State of California Environmental Protection Agency, Department of Toxic Substances Control. “Amendment to Order on Consent for Interim Response Action at The Radioactive Materials Handling Facility (RMHF) Complex.” October 30, 2020. <https://www.energy.gov/sites/default/files/2023-01/ETEC%20Order%20of%20Consent%20-%20Final%20Signed.pdf>



This agreement effectively re-defined LLRW, implemented California Senate Bill, SB-1970 (2002) that had previously been vetoed by former Governor Gray Davis, and violated California Executive Order D-62-02.²

More detail on DTSC and DOE re-defining LLRW may be found in Sections 23.0 and 23.1 of “Nuclear Decommissioning at SSFL.”³

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, an eighteen-page complaint was submitted to the DOE management hierarchy (including Secretary Granholm), providing detailed evidence of this data falsification.⁴ No response was received.

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).⁵ The complaint was assigned a tracking number 23-0160-C.

² Letter from Phil Rutherford to Steven Becker (DTSC). “Zoom Meeting on the Amendment to Order on Consent.” November 29, 2020.

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

³ Phil Rutherford. “Nuclear Decommissioning at SSFL.” Section 23.0 Amendment to Order on Consent, and Section 23.1 Destination of DOE Waste Streams.

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

⁴ Letter from Phil Rutherford to Josh Mengers (DOE). “FOIA EMCBC-2022-00149-F Data Package.” January 10, 2023.

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

⁵ Letter from Phil Rutherford to the DOE Office of Inspector General. “Shipments of Waste from the former Energy Technology Engineering Center.” February 10, 2023.

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



The following is an extract of the complaint summarizing the specific allegations and questions.

“Close inspection of these regulatory required documents [Nuclear Regulatory Commission (NRC) Forms 540/541, Uniform Low-Level Radioactive Waste Manifests] demonstrates misuse and misapplication of limited survey data, failure to identify building names, and highlights numerous inconsistent and illogical data in shipment manifests.

- *DOE uses the same limited survey data (one upper-bound surface scan data point and three wipe tests) from a contaminated, non-decommissioned facility to characterize demolition debris from different facilities,
 - 1) *the same contaminated facility, and*
 - 2) *three decommissioned buildings that had been released for unrestricted use, and*
 - 3) *four buildings that had no history of radiological use and had been surveyed as being indistinguishable from background.**
- *DOE provides no building identification names/numbers, that would facilitate distinguishing waste from (1) acknowledged contaminated non-decommissioned buildings, (2) decommissioned buildings, and (3) buildings with no history of radiological use. This is clearly an effort to obfuscate and cloak distinctions between real LLRW and fake LLRW.*
- *Instead of using the waste stream profile weighted average concentrations to derive the container activities by multiplying by the waste weight, the manifests appear to do the reverse by dividing the container activities (whose source is unexplained) by the waste weight to derive the container weighted average concentrations, which are then inconsistent with the waste stream profile weighted average concentrations.*
- *NRC 540/541 manifests for multiple separate containers have identical individual and total radionuclide activities (to the 5th significant place), yet significantly different net waste weights.*
- *NRC 540/541 manifests for multiple separate containers have identical individual and total radionuclide activities, and identical net weights (to the 7th significant place).*
- *Some individual manifests have identical gross and net waste weights implying the container has zero weight.*

Clearly there has been a systemic lack of quality control by DOE’s contractor that completed the shipping paperwork, by DOE itself, and by EnergySolutions that is



responsible to ensure the waste it receives is properly documented and complies with its NRC and Utah State licenses.

This concern was communicated in detail to the DOE, North Wind, EnergySolutions and DTSC, a month ago, but as of today, has failed to elicit any response. See online [January 10, 2023] letter to DOE for background, additional details and specific examples of the general errors/inconsistencies outlined above.

I would suggest your office investigate the following questions.

- *Why ETEC did not dispose of decommissioned material at a California Class I or II waste disposal site in compliance with California Executive Order D-62-02 and non-radiological impacted material at California Class II or III disposal sites?*
- *Why ETEC did not dispose of the fake LLRW at the DOE-authorized NNSS (a cheaper option) that would have complied with the 2020 Amendment to Order on Consent?*
- *Did NNSS refuse to accept the fake LLRW?*
- *What was the added cost to the taxpayer for sending all decommissioned material and all non-radiologically impacted waste to the licensed LLRW disposal site at EnergySolutions?"*

A full year later, on February 8, 2024, following a random status request, I was notified by the 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 would not provide me any information on its investigation, and that a FOIA request would need to be submitted to the DOE FOIA Office.⁶

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

On February 8, 2024, I submitted a FOIA request to DOE’s FOIA Office.⁷ A tracking number of HQ-2024-01160-F was subsequently assigned.

⁶ Email from OIG to Phil Rutherford. “Complaint 23-0160-C.” February 8, 2024. https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-02-08_RE_Complaint_23-0160-C_from_OIG.pdf

⁷ Email from Phil Rutherford to the DOE FOIA Office. “FOIA Request for File on OIG Complaint 23-0160-C.” February 8, 2024. https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-02-08_FOIA_Request_for_File_on_OIG_Complaint_23-0160-C.pdf



Two subsequent communications from Mr. Anthony Cruz of the DOE OIG Office on March 26, 2024⁸ and May 31, 2024^{9, 10} 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) failed to provide responses to the specific requests of FOIA HQ-2024-01160-F.

These communications from Mr. Cruz 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)).¹¹
2. On July 14, 2023, following several extension requests, Mr. Timothy Harms sent EM's response (identified as Document 4) to OIG.¹² Based on this response, and eleven days later, on July 25, 2023, OIG "*recommended closure*"¹³ and determined that "*no further action was warranted.*"¹⁴
3. On or before March 26, 2024, OIG referred Document 4 to EM for "*a determination concerning its releasability.*" OIG informed me that "*The Office of Environmental*

⁸ Letter from Anthony Cruz (DOE OIG) to Phil Rutherford. "Freedom of Information Act Request No. HQ-2024-01160-F." March 26, 2024. https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-03-26_Final_Response_Letter_HQ-2024%2001160-F.pdf

⁹ Letter from Anthony Cruz (DOE OIG) to Phil Rutherford. "Supplemental Response to HQ-2024-01160-F." May 31, 2024. https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-05-31_HQ-2024-01160-F_Supplemental_Response.pdf

¹⁰ "Supplemental Response Documents 5 thru 34 for FOIA Request HQ-2024-01160-F." May 31, 2024. https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-05-31_HQ-2024-01160-F_Supplemental_Response_Documents_5_through_34.pdf

¹¹ DOE Office of Inspector General to Senior Advisor for the Office of Environmental Management. "Alleged Waste of Funds and Mismanagement; Simi Valley CA (OIG File No. 23-0160-C)." March 16, 2023. https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2023-03-16_Memo_to_EM-1.pdf

¹² Email from Timothy Harms to OIG (Supplemental Response Document 12). "Management Referral - 23-0160-C (Contains CUI in Attachment)." July 14, 2023. https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-05-31_HQ-2024-01160-F_Supplemental_Response_Documents_5_through_34.pdf#page=16

¹³ Email exchange between OIG Personnel (Supplemental Response Document 31). "23-0160-C in the packet today." July 25, 2023. https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-05-31_HQ-2024-01160-F_Supplemental_Response_Documents_5_through_34.pdf#page=44

¹⁴ Email from OIG to Phil Rutherford. "Complaint 23-0160-C." February 8, 2024. https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-02-08_RE_Complaint_23-0160-C_from_OIG.pdf



*Management (EM) will respond to you directly concerning the document [Document 4].”*¹⁵ The silence from EM for the last 6 months has been deafening!

I responded to Mr. Cruz on March 30, 2024¹⁶ and June 9, 2024¹⁷ rebutting and further questioning OIG’s positions. In particular, I questioned why OIG appeared to be more concerned with protecting the contrived and misplaced “*personal privacy*” of DOE personnel investigating the complaint, than in responding to the specific allegations of the complaint itself.

Mr. Cruz declined to reply to my last letter of June 9, 2024.

Several telephone conversations with Mr. Alexander Morris of DOE’s FOIA Office beginning in mid-August of 2024 indicated that “[*his*] team is processing Document 4.”¹⁸ One can only surmise that “*processing*” is a translation for “*redacting*.” Mr. Morris was unable to explain why OIG has had EM’s response to the complaint (Document 4) in its possession over fourteen months and has still not provided it to me. Mr. Morris was unable to explain why EM has not released an unredacted version of Document 4. Mr. Morris was unable to give me an estimated completion date for his team’s processing/redaction activities on Document 4.

Appeal to the DOE Office of Hearings and Appeals

On August 31, 2024, on the advice of Mr. Anthony Cruz of the DOE Office of Inspector General, I submitted an appeal to the DOE Office of Hearings and Appeals (OHA), pursuant to 10 C.F.R. § 1004.8, soliciting assistance.¹⁹

¹⁵ Letter from Anthony Cruz (DOE OIG) to Phil Rutherford. “Freedom of Information Act Request No. HQ-2024-01160-F.” March 26, 2024. https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-03-26_Final_Response_Letter_HQ-2024%2001160-F.pdf

¹⁶ Letter from Phil Rutherford to Anthony Cruz (DOE OIG). “FOIA Request HQ-2024-01160-F.” March 30, 2024. https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-03-30_FOIA_HQ_2024-01160-F.pdf

¹⁷ Letter from Phil Rutherford to Anthony Cruz (DOE OIG). “FOIA Request HQ-2024-01160-F.” June 9, 2024. https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-06-09_Response_to_Anthony_Cruz_FOIA_HQ-2024-01160-F.pdf

¹⁸ Email from Alexander Morris (FOIA Officer) to Phil Rutherford. “FOIA HQ 2024-01160-F and OIG Complaint 23-0160-C. August 15, 2024. https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-08-15_Email_from_DOE_FOIA_Morris.pdf

¹⁹ Letter from Phil Rutherford to DOE Office of Hearings and Appeals. “Freedom of Information Appeal (FOIA HQ-2024-01160-F).” August 31, 2024. https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-08-31_Letter_to_Office_of_Hearings_and_Appeals.pdf



In this letter, DOE was given notice of the intent to seek relief outside of DOE, with the Congressional Committee on Oversight and Accountability.

On September 5, 2024, following an extensive two-day review, the Director of OHA, Poli Marmolejos, issued a denial of my appeal (FIA-24-0050), alleging that my appeal was devoid of “*grounds for appeal*” or “*a description of the relief sought.*”²⁰

On September 8, 2024, I emailed Director Marmolejos, challenging this cursory review.²¹

On September 10, 2024, OHA replied, washing its hands of appeal FIA-24-0050, and stating, “*This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 522(a)(4)(B).*”²²

Having exhausted my options under DOE’s administrative review, I fully intend to pursue judicial review. Nevertheless, I recognize that the legal process can travel at a glacial speed, unless sped up by politics. In the interim, I am therefore submitting the subject complaint to your Congressional Oversight Committee, in the hopes that your elected members can exert influence on the appointed and non-appointed members of management of the Department of Energy to address my complaint.

Political Implications

I am aware of the potential political biases of your Committee and the tendency to attribute a left, or right wing, agenda to causes the Committee chooses to follow. However, this complaint spans both Trump and Biden Administrations, and is therefore truly non-partisan, and should appeal to both sides of your Committee.

²⁰ Letter from Poli Marmolejos (OHA) to Phil Rutherford. “Decision and Order.” September 5, 2024.
https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-09-05_FIA-24-0050_Decision.pdf

²¹ Email from Phil Rutherford to Director of OHA. “Freedom of Information Act (FOIA) Appeal, Request No. HQ-2024-01160-F, OHA Case No. FIA-24-0050.” September 8, 2024.
https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-09-08_RE_FOIA_Appeal_Request_HQ-2024-01160-F_OHA_Case_FIA-24-0050.pdf

²² Email from OHA to Phil Rutherford. “Freedom of Information Act (FOIA) Appeal, Request No. HQ-2024-01160-F, OHA Case No. FIA-24-0050.” September 10, 2024.
https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-09-10_OHA_Reply_FOIA_Appeal_Request_HQ-2024-01160-F_OHA_Case_FIA-24-0050.pdf



The 2020 Amendment to Order on Consent (2020 AOC)²³ that re-defined LLRW, occurred during the Trump Administration and a DOE press release announced this questionable achievement.²⁴

Initial shipments of building debris whose records were falsified occurred in the later end of 2020 during the Trump Administration. Subsequent shipments of building debris occurred during all of 2021 during the Biden Administration. The subject complaints and the apparent cover-up by DOE occurred in 2023-2024 during the Biden Administration.

Summary

This sad story started when DOE capitulated to a California 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, DOE-EM's response to OIG Complaint 23-0160-C (Document 4) has still not been provided to me. OIG has had Document 4 in its possession, over fourteen months since July 14, 2023. EM was asked by OIG to release Document 4 on or before March 26, 2024, 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 and stonewalled. 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, the DOE Office of Hearings and Appeals, 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 on my website.²⁵

²³ State of California Environmental Protection Agency, Department of Toxic Substances Control. "Amendment to Order on Consent for Interim Response Action at the Radioactive Materials Handling Facility (RMHF) Complex." October 30, 2020. <https://www.energy.gov/sites/default/files/2023-01/EETEC%20Order%20of%20Consent%20-%20Final%20Signed.pdf>

²⁴ DOE Press Release. "Trump Administration Works with State of California to Advance Next Steps For Cleanup at ETEC." November 4, 2020. https://www.energy.gov/sites/default/files/2023-01/California%20clean%20up%20release%2011_4%20PDF.pdf

²⁵ Phil Rutherford Consulting. "2020-2021 DOE Waste Characterization at the Energy Technology Engineering Center." <https://philrutherford.com/ssfl.html#wastefoia>



More detail on DTSC and DOE re-defining LLRW may be found in Sections 23.0 and 23.1 of “Nuclear Decommissioning at SSFL.”²⁶

More detail on the falsification of data and cover-up by DOE may be found in Section 23.4 of “Nuclear Decommissioning at SSFL.”²⁷

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

²⁶ Phil Rutherford. “Nuclear Decommissioning at SSFL.” Section 23.0 Amendment to Order on Consent, and Section 23.1. Destination of DOE Waste Streams.
https://philrutherford.com/SSFL/Nuclear_Decommissioning_at_SSFL.pdf#page=86

²⁷ Phil Rutherford. “Nuclear Decommissioning at SSFL.” Section 23.4 Falsification of ETEC Waste Manifests.
https://philrutherford.com/SSFL/Nuclear_Decommissioning_at_SSFL.pdf#page=99