



Submitted to [JunkScience.com Online Email Portal](#) and [Online](#)

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Steve Milloy
JunkScience.com

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

Dear Mr. Milloy,

I believe our paths crossed many decades ago related to the 1997 Rocketdyne Worker Health Study conducted by UCLA, that was debunked eight years later by John Boice.

I also note that you have been involved with the current battle over the linear no threshold (LNT) theory of radiation risk. I also oppose LNT. I note that Project 2025 includes a commitment to re-visit the "science" behind the LNT theory. I would support that. Though in the interest of openness and transparency, I am not a fan of Trump and am not a climate change denier.

However that is not the reason for this letter.

Re-defining of Low-level Radioactive Waste

In 2020-2021, the California Department of Toxic Substances Control (DTSC) forced the DOE to dispose of demolition debris from decommissioned buildings, and from non-radiological buildings, as low-level radioactive waste (LLRW). This re-defining of LLRW was done to satisfy the demands of Dan Hirsch of the Committee to Bridge the Gap (CBG). This also satisfied California activists' demands to "clean-up to background" which is a logical consequence of the LNT, "no safe level of radiation" mantra.

Falsification of Waste Shipping Records

Subsequently, DOE sent clean demolition debris to the EnergySolutions LLRW disposal site in Clive, Utah.



Extensive review of the EnergySolutions' waste profiles and Nuclear Regulatory Commission (NRC) Forms 540/541 LLRW Manifests identified systematic falsification of these waste shipping records.

Department of Energy Cover-Up

For the last 22 months, I have been battling with DOE to acknowledge this falsification of shipping records, including DOE OIG complaint 23-0160-C and DOE FOIA HQ-2024-01160-F. As of the date of this letter, DOE has failed to address or dispute any of the specific allegations of 23-0160-C, and/or respond to the specific requests of DOE FOIA HQ-2024-01160-F. This appears to be a department-wide cover-up by the DOE.

Summary

The attachment to this letter is a summary timeline of documented communications with the DOE, including extensive technical bases for the allegations of the complaint. If you think that this matter is worth including on your JunkScience.com website, please feel free to use any of the online content. Thank you for your attention to this matter. If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

Phil Rutherford
President: Phil Rutherford Consulting



Falsification of ETEC Waste Shipping Records by the Department of Energy

November 10, 2024

This complaint covers three related examples 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

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

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>

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



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 from any recipient.

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.

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

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
https://philrutherford.com/SSFL/Nuclear_Decommissioning_at_SSFL.pdf#page=89

⁴ Letter from Phil Rutherford to Josh Mengers (DOE-EETC). “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



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 revealed 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 eight 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 has declined to reply to my last letter of June 9, 2024.

Several telephone and email communications 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 U.S. House 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

Complaint to the US House Committee on Oversight and Accountability

Having exhausted my options under DOE’s administrative review, I fully intend to pursue judicial review. Nevertheless, I recognized that the legal process could travel at a glacial speed, unless sped up by politics. In the interim, I therefore submitted the subject complaint to the U.S. House Committee on Oversight and Accountability,²³ in the hopes that its elected members could exert influence on the appointed and non-appointed members of management of the Department of Energy to address my complaint.

I was aware of the potential political biases of the Committee and the tendency to attribute a left, or right wing, agenda to causes the Committee chooses to follow. However, this

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

²³ Letter from Phil Rutherford to the U.S. House Committee on Oversight and Accountability, “Whistleblower Complaint – Falsification of Waste Shipping Records from the Department of Energy’s Energy Technology Engineering Center (ETEC).” September 23, 2024.
https://philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-09-23_Letter_to_Committee_on_Oversight_and_Accountability.pdf



complaint spanned both the first Trump and Biden Administrations, and is therefore truly non-partisan, and should have appealed to both sides of the Committee.

The 2020 Amendment to Order on Consent (2020 AOC)²⁴ that re-defined LLRW, occurred during the Trump Administration and was signed by Todd Shrader, Principal Deputy Assistant Secretary for DOE-EM. A DOE press release announced this questionable achievement.²⁵

Initial shipments of building debris whose records were falsified occurred in the later end of 2020 during the first 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.

As anticipated, the Committee on Oversight and Accountability chose to ignore my communication, choosing instead to continue its partisan mud-slinging during the 2024 election season.

Summary

This sad story started when DOE capitulated to a California agency (DTSC) to re-define low-level radioactive waste and force DOE to dispose of non-LLRW to a licensed LLRW disposal site. This inevitably led to falsification of waste shipping records.

As of the date of this letter, 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 sixteen months since July 14, 2023. EM was asked by OIG to release Document 4 on or before March 26, 2024, eight 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

²⁴ 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>

²⁵ 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



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 senior advisor to EM), and Secretary of Energy, Jennifer Granholm appear to be complicit in a deliberate twenty two month cover-up.

A full timeline of communications with DOE on this matter is available on my website.²⁶

More detail on DTSC and DOE re-defining LLRW may be found in Sections 23.0 and 23.1 of “Nuclear Decommissioning at SSFL.”²⁷

More detail on the falsification of data and cover-up by DOE may be found in Section 23.4 of “Nuclear Decommissioning at SSFL.”²⁸

It is suggested that the URLs in the footnotes of this letter 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 by DOE management.

²⁶ Phil Rutherford Consulting. “2020-2021 DOE Waste Characterization at the Energy Technology Engineering Center.” <https://philrutherford.com/ssfl.html#wastefoia>

²⁷ 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
https://philrutherford.com/SSFL/Nuclear_Decommissioning_at_SSFL.pdf#page=89

²⁸ 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