



Bobby Graff, President
Herman Potter, Vice President

LOCAL 689

January 19, 2011

John S. Boulden, III, Acting Director
Office of Enforcement
Office of Health Safety and Security
1000 Independence Avenue
Washington, DC 20585

Subject: Request for Enforcement Investigation at Portsmouth, Ohio Site

Dear Director Boulden:

Two enforcement investigation requests were submitted to your office on or about June 15th, 2010. One request was in regards to deviation of required criteria in the DOE approved LPP site health and safety plan. The other request was related to multiple potential violations of 10CFR851 during a potential exposure incident involving repackaging waste during the "shell project". After 5 months of evaluation by your office, the determination was made that there were not any non-compliances that were of sufficient safety significance to warrant a formal investigation.

I respectfully disagree with your findings. The requirement identifying that the USW members conduct the HAZWOPER training was a very basic straight forward requirement. The management knowingly and willfully, with full knowledge of the local DOE representatives, contracted training to an outside entity. This was a clear deviation of the health and safety plan. Later, in order to become consistent with the practice, the health and safety plan was modified without any notification to the USW Local 689 regarding the change. Both of these issues are specifically identified in the text of 10CFR851. Also, there is the additional issue that the Company paid a contractor to conduct training and that funding was already appropriated by Congress through the NIEHS grant training programs. This establishes a perception of fraud and abuse that one would expect the Office of Enforcement or the Office of Environmental Management to forward to the appropriate agency.

During a hazardous waste repackaging evolution, there were multiple issues that culminated in a potential employee exposure. Nine specific items were identified. A number of the items related to proper evaluation of the hazards of the job, including the monitoring program prior to the start of the job. Your response stated that the sampling and bioassay programs were appropriate for the potential hazards anticipated during the May 7th, 2010 convertor shell processing. We disagree with this statement. The contractor placed 2 convertor shells aside in order to process at the end of the project. This was done because the contractor was aware of the potential unknown hazards that may be contained in the shell itself. This eliminates the concept of using process knowledge from the processing of prior shells. Sampling was conducted after the potential exposures. Many of the samples were done weeks after and only sampled for some of the non-volatile hazards. The process did not require respiratory equipment and also permitted multiple levels of PPE in the immediate work area. There were many individuals who claimed to have a burning sensation to the face during and immediately after the operation with the one individual suffering more severe symptoms later and continuing to this date.

You stated that there wasn't any evidence of anyone inappropriately reassigned when they reported the hazards. The individual was removed from the work area while others remained and later was being disciplined for another issue. The disciplinary action was rescinded, but only after the message was sent to the rest of the workforce.

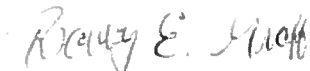
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You stated that LPP exhibited sufficient rigor and detail in its internal investigation process. The investigation process did not include worker involvement as required by DOE ISMS directives. There wasn't any known investigation by the Office of Enforcement into the area of whether information was being omitted or modified in order to lessen the concern of the adequacy of the investigation process.

The request for investigation challenged the adequacy of the enforcement process at the DOE facilities. Clearly, the Office of Enforcement only spoke with the contractor and the site Office of Environmental Management. There wasn't any detailed discussion with any labor representative. Labor health and safety representatives were not provided the opportunity to challenge any of the sanitized information that was provided to the Office of Enforcement by the Office of Environmental Management. In fact, when I formally requested the information that was provided to the Office of Enforcement, I was informed by your letter that I needed to file a Freedom of Information Act request. I found that this was an improper response to a request in which the information may prevent workers that I represent from injury and illness.

The delay in response prevents us from taking further action with another regulator due to a statute of limitations. Due to this unfortunate occurrence, we shall modify our process of dealing with DOE health and safety issues by concurrently contacting external regulators in order to ensure a healthy and safe workplace at the Portsmouth, Ohio DOE facility.

Sincerely,



Bobby E. Graff
President, USW Local 689



Department of Energy

Washington, DC 20585

December 23, 2010

Mr. Herman R. Potter, Vice President
United Steelworkers Local 689
2288 Wakefield Mound Road
P.O. Box 467
Piketon, Ohio 45661

Dear Mr. Potter:

The Office of Health, Safety and Security's Office of Enforcement received two requests for investigations of worker safety issues at the Department of Energy's (DOE) Portsmouth, Ohio, site that you submitted on June 17, 2010. Awareness and communication are critical as we strive in our mutual efforts to identify, assess, and ensure the health and safety of our workers.

The detailed results of our evaluation of your two requests are enclosed, and are based on a review of the reported safety concerns against 10 C.F.R. Part 851 requirements, the LATA/Parallax Portsmouth, LLC *Worker Safety and Health Plan*, and other related documents. The Office of Enforcement did not identify Part 851 noncompliances that were of sufficient safety significance to warrant a formal investigation.

Thank you for informing the Office of Enforcement of your concerns. We appreciate your interest in helping to achieve our goal of ensuring a safe and healthy workplace at DOE sites. Should you have any additional questions, please contact Mr. Kevin Dressman, Acting Director, Office of Worker Safety and Health Enforcement, at (301) 903-0100.

Sincerely,

A handwritten signature in black ink that reads "John S. Boulden III".

John S. Boulden III
Acting Director
Office of Enforcement
Office of Health, Safety and Security

Enclosure



Under 10 C.F.R § 851.40, *Investigations and inspections*, subsection (c), workers and their representatives have the right to request that the U.S. Department of Energy (DOE) Director of Enforcement investigate a reported violation of 10 C.F.R. Part 851 (Part 851).

1. Your first *Request for Investigation or Inspection of Safety or Security Violations* (RFI) indicates deficiencies regarding safety and health training for LATA/Parallax Portsmouth, LLC (LPP) workers at the DOE Portsmouth site. The reported safety and health deficiencies include the following:
 - a. LPP hires external trainers to conduct hazardous waste operations and emergency response (HAZWOPER) training. This constitutes fraud and abuse because DOE has allocated funds to the National Institute of Environmental Health Sciences (NIEHS) grant program for the United Steelworkers (USW) to conduct HAZWOPER training at USW represented sites.
 - b. The LPP Health and Safety Plan states that the USW local conducts HAZWOPER training. Hiring outside trainers contravenes the approved site safety and health plan and therefore violates Part 851.

To evaluate this RFI, the Office of Enforcement reviewed the LPP *Worker Safety and Health Plan* (LPP-1745/R6). The Office of Enforcement obtained additional background information through discussions with DOE personnel from the Portsmouth/Paducah Project Office (PPPO) and by accessing the USW grant-related training information on the NIEHS website: <http://www.niehs.nih.gov/careers/hazmat/awardees/steelworkers.cfm>

Our review determined that although DOE provides funding to the NIEHS grant program for the USW, there is no specific requirement in Part 851 that a DOE contractor exclusively employs an NIEHS vendor or any other source to provide required training. LPP's decision to select a training vendor other than the USW does not constitute a violation of Part 851. Furthermore, LPP-1745/R6 eliminates reference to the USW providing HAZWOPER training for LPP employees.

Based on this evaluation, the Office of Enforcement concludes that the reported conditions do not warrant further investigation of potential violations of Part 851 requirements by LPP at the X747K Converter Shell Project work area.

2. Your second RFI reports that LPP did not protect workers from hazardous exposures during work on the X747K Orphan Converter Shell Project on or about May 7, 2010, at the Portsmouth site. Subsequent to the job evolution, a worker was treated for physiological symptoms that he stated resulted from exposure to an unknown substance. You indicate deficiencies in the pre-job evaluation and briefing, personal protective equipment (PPE), personnel sampling and bioassay program, and event investigation process. In addition, you indicate that workers who identify potential hazards are subsequently reassigned.

To evaluate this RFI, the Office of Enforcement reviewed the *X747K Converter Shell Processing Work Package* (LPP-WP-10-0071, Rev.0); *Converter Shell Project Activity Hazard Assessment* (LPP-AHA-07-0030, Rev.7); *LATA Parallax Problem Report* (PR-LPP-10-37-ARRA); *LATA Parallax Response Report* (PT063065); and related supporting documentation. PPPO provided the Office of Enforcement with additional background information.

Our review determined that LPP's pre-job evaluation and briefing were based, in part, on prior experience processing approximately 380 converter shells similar to the one referenced in the RFI. This information was detailed in the *X747K Converter Shell Processing Work Package* and the *Activity Hazard Assessment*. Based on this prior work, the PPE as specified in the *Converter Shell Project Activity Hazard Assessment* was appropriate for the potential hazards identified at the time. Since the May 7, 2010, event, LPP has further revised the *Activity Hazard Assessment* PPE requirements to reflect the new lessons learned from this occurrence.

The sampling and bioassay programs were appropriate for the potential hazards anticipated during the May 7, 2010, converter shell processing. Additionally, LPP expanded the scope of tests following the concerns raised by workers to include airborne dust measurements and an estimate of breathing zone metal exposure. The results from the test and their calculations were within the occupational exposure regulatory limits. The worker reported physical symptoms following the converter shell work on May 7, 2010, and underwent medical evaluation and testing. On September 2, 2010, the examining physician submitted a diagnosis that the reported symptoms were unlikely related to the May 7, 2010, event.

The Office of Enforcement found no evidence that personnel were inappropriately reassigned when they reported potential hazards. Information provided via PPPO indicated that LPP followed appropriate procedures for the worker who raised the concern regarding dust from the converter shell processing on May 7, 2010. Finally, both documentation and comments provided by PPPO indicate that LPP exhibited sufficient rigor and detail in its internal investigation process and corrective action plan for the reported event.

Based on this evaluation, the Office of Enforcement identified no Part 851 noncompliances that were of sufficient safety significance to warrant a formal investigation at the Portsmouth X747K Converter Shell Project work area.

On August 3, 2010, you sent an electronic request to the Office of Enforcement for copies of any employee complaints relating to the X-701B project at the DOE Portsmouth, Ohio, site. Under 10 C.F.R. § 851.40(e), the Office of Enforcement may not release information in documents relating to an ongoing investigation (or involving a possible investigation) unless disclosure of the information is not precluded by the Freedom of Information Act (FOIA) and the Director of Enforcement authorizes disclosure of the information. If released, the protected information in the documents becomes a matter of public record.

FOIA (found at 52 U.S.C. § 552; implemented by DOE at 10 C.F.R. Part 1004) requires under 52 U.S.C. § 552(b)(7)(A) that a Federal agency protect records from disclosure if release could reasonably interfere with a potential or ongoing investigation or another administrative proceeding. In accordance with 5 U.S.C. § 552(b)(7)(C), FOIA also exempts from disclosure personal information contained in documents if the release of such information would constitute an unauthorized invasion of personal privacy.

The Office of Enforcement received a complaint that contains references associated with Part 851 noncompliances at the X-701B project. The referenced complaint contains information that could form the basis of a worker safety and health enforcement investigation. The complaint also contains personal information including the names, positions, and activities of individuals and disclosure of this sensitive information could invade their right to privacy. Non-exempt portions of the complaint cannot be reasonably segregated and released under FOIA. Furthermore, if the Office of Enforcement decides to conduct an investigation, release of the complaint has the potential to discourage candor and openness during an enforcement proceeding. Based on the foregoing, the Office of Enforcement has determined that it would be inappropriate to release the employee complaint concerning the X-701B project at this time.