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Auditors' Lawsuit Alleges Rad-waste Mishandling and Taxpayer Rip-off by DOE Contractors at INEEL

For many years the Environmental Defense Institute and more recently Idaho Falls Attorney David McCoy have been investigating the Idaho National Engineering and Environmental Laboratory (INEEL) waste management practices often involving illegal, unpermitted facilities at INEEL. A False Claims suit has been filed in 1996 against the INEEL contractors by former environmental auditors, but only recently "unsealed." The lawsuit alleges hundreds of millions of taxpayer dollars were wasted at INEEL by Department of Energy (DOE) contractors who criminally disposed of hazardous and radioactive waste into the air and water. Many of the facts presented in the lawsuit by the auditors sharply parallel the type of wrongdoing which EDI and McCoy have found at INEEL.

Clearly, given the extent of the environmental and permitting violations and illegal operations which have been cited by the auditors and environmental organizations, a full scale U.S. Congressional investigation and audit of the INEEL is called for. The Congressional audit should include a full scale investigation of each facility at INEEL including whether an individual facility is properly permitted and operating in accord with environmental laws. Given that $19 billion of future environmental cleanup dollars are going to be sent to Idaho, the Congress should immediately move to protect the public health and safety and the future viability of the Snake and Columbia River basins by piercing the veil of secrecy surrounding the ongoing colossal financial and environmental failure which has prevailed for several decades at INEEL.

The auditors allege DOE contractors deliberately violated environmental laws and then submitted false claims to the U.S. Government for payment for environmental remediation which did not occur but which actually further contaminated the INEEL site. Hazardous, unmonitored radioactive air emissions, such as radioactive iodine, threatened the health of southeastern Idaho citizens. Hazardous solvents, radioactive chemicals and/or heavy metals were dumped by INEEL contractors into the aquifer above the Snake River, the Idaho sewer system and the Bonneville county landfill. The auditors allege they were fired for attempting to bring their concerns to upper management.

And this isn't the first time INEEL has been challenged for environmental contamination! In a 1993 ruling against DOE for environmental violations at INEEL, Federal Judge Harold Ryan wrote: "DOE simply does not seem to understand that this nation is depending on it to protect the health and safety of all Americans from the dangers associated with its activities."

“ Such callous disregard for the legitimate concerns raised on behalf of the citizens of Idaho is exactly the type of conduct which tarnishes the image of federal government agencies in the eyes of the people." Management and treatment of one of the most deadly hazardous chemical and radioactive waste stockpiles (its only lethal rival might be the military stockpile of leaking nerve gas canisters) requires the best available technical and operational excellence. The lives of families downwind and downstream are in danger and INEEL and DOE must be held to strict adherence of environmental laws.

The False Claims Act suit was filed in Federal Court for the District of Idaho by former INEEL environmental auditors Neil Mock and Scott Lebow against INEEL contractors Lockheed Martin, EG&G Idaho, Westinghouse Idaho, Westinghouse Government Environmental Services, Coleman Research, and Parsons Environmental Services. The thrust of the suit charges the contractors for defrauding the United States of America by charging for services that violated environmental laws and their contract stipulations that required compliance with all applicable environmental laws.

Congress created the False Claims Act to provide for "citizen suits" on behalf of the United States of America when individuals or corporations submit false or fraudulent claims to the federal government and the government fails to defend the interests of the American people. In this case neither the U.S. Justice Department, the U.S. Department of Energy, the U.S. Environmental Protection Agency, nor the Idaho Department of Environmental Quality would intervene on behalf of the taxpayer. In fact, the Justice Department demanded that the lawsuit documents be "sealed" or kept secret for five years while they decided whether to intervene in the suit. Only last month were the Complaints filed by Neil Mock and Scott Lebow unsealed and a new hearing set by U.S. District Judge Lynn Winmill for February 27th in Pocatello, Idaho.

Why wouldn't the government want to defend us, as taxpayers? To intervene in the lawsuit, all these agencies would be forced to acknowledge that they failed for decades the "due diligence test" fundamental to their respective agency mandates. They would have to claim disability exemption for being deaf, dumb, and blind. By not intervening in the lawsuit, the agencies threaten to expose their awareness of the fraud for a decade about which they did nothing, and thus reveal their own culpability. The False Claims Act, therefore, provides a legal remedy for conscientious individuals who are willing to risk everything for the collective good of the country.

Secrecy on the part of federal agencies continues to obstruct the public's right to know what allegations of criminal activities are affecting their health and safety. This False Claims suit was filed in February of 1996, and the government forced the suit complaints to be "sealed" which means none of the parties could "go public" with the substance of the lawsuit. Secrecy always cripples the public's fundamental rights to accountability and transparency of its agencies that taxpayer funding supports to protect the public health and safety.

Every INEEL contract, whether a primary or a subcontract, required strict compliance with the environmental laws. Neil Mock and Scott Lebow had responsibilities for auditing the activities of both the primary contractors and several of their subcontractors. In the course of a series of audits performed by Mock and Lebow, the auditors discovered widespread non-compliance with

applicable federal and state environmental and health and safety requirements. These violations constituted material breaches of the contractual undertakings of the contractors and subcontractors. Among the most serious of the problems Mock and Lebow discovered in the course of their auditing work at INEEL were these:

- Improper dumping and disposal of hazardous materials;
- Mishandling of dangerous chemicals such as mercury and PCBs;
- Falsification of documents to cover up serious non-compliance, including forging the signature of the employee responsible for assuring the health and safety of employees engaged in environmental monitoring activities;
- Failure to properly manage the decommissioning of both aboveground and underground storage tanks;
- Falsification of documents to hide failures to report spills and discharges of hazardous chemicals;
- Failure to properly manage and monitor emissions of hazardous materials from incinerators; and
- Failure to properly manage the shipment, handling and treatment of radioactively contaminated and other hazardous materials.

Despite repeated attempts by Mock and Lebow to communicate their findings to responsible corporate management, no corrective action was taken. When some of these acts of contractor non-compliance came to the attention of the DOE Inspector General and the Idaho Department of Environmental Quality, INEEL contractors Lockheed and Coleman began to threaten retaliation against Mock and Lebow for their cooperation in what were described as whistleblowing activities. The contractors made it impossible for the auditors to continue to work, and were effectively removed from positions of responsibility as auditors and were forced to resign.

DOE uses a system called "Cost Plus Award Fees" to pay for contractor services at INEEL. The "cost" represents the direct changeable costs incurred by the contractor to provide the services. The "plus award fees" represents a cash incentive or "bonuses" offered the contractors if they do their job in full compliance with all applicable laws. Below are three examples of Award Fees paid to INEEL contractors.

- EG&G Idaho received between 1992 and 1994 over $14.1 million in bonuses;
- Lockheed Martin received between 1995 and 1999, over $72 million in bonuses;
- Westinghouse Idaho received between 1990 and 1994, over $15.7 million in bonuses.

The above Award Fees are doled out by DOE based on each contractor's biannual "self-assessment" of their performance during the previous six months. DOE uses these self-assessments to determine whether and at what level the contractor would receive additional compensation in the form of "Cost Plus Award Fees." Stipulations in the corporation's contract with DOE require full disclosure in the self-assessments related to any violations of environmental or other applicable laws. The False Claims suit documents allege that the contractors filed false and fraudulent self-assessments to DOE and that these representations were in most cases outright lies.

As environmentalists tracking the operations at INEEL, we have always been appalled when news stories announced these bonuses to contractors who we know were being paid to operate plants that pollute the environment, and were given bonuses for cost cutting measures that increased environmental degradation, and finally given contract extensions to then clean up the mess they and their predecessors created in the first place. The bill for Superfund cleanup of INEEL alone exceeds $19 billion due to DOE's irresponsible management of its nuclear waste. The hard reality is "real cleanup" will never happen and huge tracts of Idaho's high desert will remain eternally a nuclear sacrifice zone and the Snake River Aquifer will continue to be polluted.

Advocacy for the Environment

Although the recent False Claims lawsuit sheds considerable light on the internal INEEL regulatory non-compliance issues, the Environmental Defense Institute (EDI) and Attorney David McCoy have launched numerous legal challenges to INEEL operations that are not addressed in the False Claims suit. Primarily, these challenges are focused on INEEL operations that do not have hazardous waste permits and do not comply with even the basics of the environmental laws such as the Resource Conservation Recovery Act (RCRA) and Clean Air Act.

In April 2000, EDI, McCoy and KYNF, ("Plaintiffs") filed a Notice of Intent to Sue DOE over failure to comply with RCRA and Clean Air Act in operation of the Calcine Incinerator which burns high-level radioactive and chemical waste at INEEL;

In May 2000, the Plaintiffs filed a Notice of Intent to Sue EPA and the State of Idaho over failure to comply and **enforce** the RCRA and Clean Air Act in operation of the Calcine Incinerator. The Calciner was subsequently put in stand down mode pending a review under the National Environmental Policy Act;

In August 2000, the Plaintiffs filed a notice with EPA Office of Inspector General and the DOE Office of Inspector General requesting an investigation of the State of Idaho Department of Environmental Quality, EPA Region 10, and DOE Idaho Operations Office concerning RCRA, Clean Air Act, and Toxic Substances Control Act (TSCA) permitting procedures at INEEL;

In September 2000, the Plaintiffs filed a Notice of Intent to Sue DOE, EPA, and the State of Idaho over RCRA and TSCA violations in operation of the WERF Incinerator that burns low-level radioactive and hazardous chemical waste. WERF was subsequently shut down;

In September 2000, the Plaintiffs filed with EPA Inspector General and the USDOE Inspector General another request to investigate the INEEL Specific Manufacturing Capability operation for RCRA, TSCA, and Clean Air Act violations.

The largest contributors to air pollution from mixed hazardous chemical and high-level radioactive waste treatment operations at INEEL include the Calciner high-level waste incinerator, the High-level Liquid Waste Evaporator, the Process Equipment Waste Evaporator, and the Liquid Effluent Treatment and Disposal Evaporator. The WERF radioactive waste

incinerator (now shut down) and the Specific Manufacturing Capacity (SMC) hazardous chemical and radioactive incinerators also generate considerable emissions. Though our challenges over the Calciner operation resulted in a temporary stand down of the incinerator pending an INEEL High-level Waste Environmental Impact Statement (EIS) finding, DOE may restart it as one of the EIS preferred alternatives. A separate pending EIS may also find INEEL the best site to resume reactor spent reactor fuel reprocessing for plutonium production that DOE claims is needed for the space program. This means existing non-compliant waste treatment operations will continue to be utilized if this plutonium production mission lands at INEEL.

None of these major radioactive waste operations has ever been permitted under federal hazardous waste treatment statutes primarily because none can comply with the Resource Conservation Recovery Act (RCRA), Clean Air Act (CAA), Toxic Substances Control Act (TSCA), or the Maximum Achievable Control Technology (MACT) standards for federal hazardous waste treatment, and yet the State of Idaho, and the EPA failed to force compliance or closure of these extremely dangerous operations. The regulators allowed DOE to continue operations under "interim status" that expired a decade ago. Given this laisse-faire attitude by the regulators, DOE has no incentive to comply with the law. To put this into perspective, common municipal garbage incinerators receive extensive regulatory oversight to insure prescribed operational compliance, yet INEEL waste treatment operations of the most hazardous materials known to human kind (in the same category as nerve gas used in chemical warfare) receive next to no enforcement of environmental law. It is like the cop giving INEEL Manager a parking ticket, while knowingly allowing her to drive away in a stolen vehicle.

In 1989, Congress passed the Federal Facility Compliance Act, which was intended to put an end to DOE claims of sovereign immunity from environmental laws. A decade later and nothing has changed. DOE remains the single largest radioactive and chemical polluter in the land making new Superfund sites faster than it cleans up old ones. Unenforced laws are the functional equivalence of no laws.

An example of continued violations at INEEL can be seen in a recent internal DOE safety report that acknowledges that two million gallons per day of hazardous chemical and radioactive waste water is being dumped into an unlined percolation pond that is on the Superfund cleanup list. This pond has been in use for nearly five decades despite the fact that it contaminated the underlying Snake River sole source aquifer with radioactive strontium, cesium, and tritium in addition to a vast array of toxic chemicals and heavy metals. Regulators told DOE to stop using the percolation pond because the water leaches the contaminates in the underlying soil column down to the aquifer. This aquifer pollution significantly exceeds EPA's drinking water standards. The percolation pond is located at INEEL Idaho Chemical Processing Plant now called INTEC operated for DOE by Bechtel B&W Idaho. INEEL is in the process of building a new percolation pond for use by 2004 to replace the old one even though that would violate a 1993 DOE Headquarters Order prohibiting the use of percolation ponds. The report notes that INEEL management is not demonstrating any credible assurances that the new percolation pond will not be used for the same contaminate disposal as the old pond and thus create a new Superfund site. At two million gallons per day for three more years of dumping in the old percolation pond amounts to about 2.19 billion gallons of waste water that could flush most of the contaminants in the soil column down to the aquifer and then Bechtel can claim they no longer need to clean up

the site because the contaminate levels are below regulatory concern. As reported in Energy Daily by George Lobsenz: "INEEL officials had evaluated a closed-loop system for handling service water effluent, but concluded the cost of increased evaporation efforts and other measures was prohibitive-on the order of $830 million." Does anyone want to put odds on how much of the $830 million will end up as a bonus to Bechtel in its upcoming Cost Plus Fee Award?

These discussions on the mixed hazardous high-level radioactive waste treatment plants are offered here as examples of broader fundamental non-compliance problems at INEEL. DOE's ability, as a federal agency, to violate these environmental laws with impunity, literally removes the general public's only protection against non-consensual harm short of litigation, which only occurs after the harm has already been inflicted. DOE's egregious release of hazardous chemicals and radioactivity jeopardizes the health and safety of workers and communities living downwind of the INEEL. Additionally, DOE and the regulatory agencies conspired to conceal information from the public that would expose the truth about these illegal operations. Considerable effort was required by the Environmental Defense Institute and Attorney David McCoy through Freedom of Information Act and State of Idaho Public Information Requests to compile the documentation on the violations. DOE and its contractor representatives meet every quarter with State officials to discuss RCRA compliance issues. The public has been blocked from these meetings in violation of the State's Open Meeting Law, Federal Open Meetings statute, and Federal Advisory Committee Act statutes.

Clearly, INEEL is not unique, because at every DOE facility throughout this country a similar scenario exists. For example, a citizen suit against DOE's Los Alamos National Laboratory convinced the Federal District Court for New Mexico that DOE was falsifying radiation release reports required under the Clean Air Act. Subsequently, the Court issued a Consent Decree that imposed a court supervised independent monitoring program to ensure compliance with the law.

DOE Internal Documents Confirm Non-compliance with Clean Air Act

DOE internal documents gained through Freedom of Information Act requests acknowledge that ICPP radioactive Iodine stack monitors were shut off since 1993 in violation of federal Clean Air Act regulations.

Iodine-129 is a well-known carcinogen that has a toxic half-life of 16 million years and therefore is a heavily regulated pollutant. State and federal regulators with a legal mandate to oversee Clean Air Act compliance have again demonstrated incompetence, or complicity since it is believed EPA, and Idaho Department of Environmental Quality (IDEQ) have a copy of these reports. IDEQ is the state agency, and EPA is the federal agency authorized to enforce environmental laws.

Lockheed Martin, lead Management and Operations contractor at INEEL at the time, knew in October 1994 of environmental compliance violations at WERF and INTEC relating to the monitoring of emissions of radioactive and hazardous air pollutants. An environmental safety and health report produced by Lockheed subcontractor RUST identified concerns related to

alarm settings, and design basis that are not documented; and alarm settings and design basis that are not consistent for monitoring equipment at various INEEL facilities. During the years 1995 and 1996, Lockheed on occasion disabled or disconnected the monitoring devices at INTEC to conceal excess emissions of radioactive iodine. During 1995, the monitoring devices at WERF were disabled to conceal excess emissions of Hazardous Air Pollutants. In February 1996 concerned Lockheed employees Joe Parette and Mark Feldman informed Lockheed managers Cheryl Koshuta and Carlos Tollez, about serious violations at WERF and INTEC. In March 1996, Lockheed management was again informed by its employees that the gaseous monitoring system in the INTEC Main Stack is currently not in use and the INEEL needs to either inform the EPA that the gaseous monitoring system is not operating or restart the gaseous monitoring system. Additionally, the sampling system to provide emission characterization is questionable and that the line loss characterization has not been done on the Category I sources continuous sampling systems.

The DOE reports show that Iodine-129 from the Idaho Chemical Processing Plant (now called INTEC) main stack constitutes up to 50% of the radiation dose to the public from the entire INEEL site. The Clean Air Act requires that any single contaminant with even the potential of 10% of the dose to the public must be continuously monitored and reported. Yet the following July (1996) Lockheed personnel acknowledged turning off air monitors for Iodine-129 since 1993. They also committed other permitting and reporting violations as the following excerpt from Air Legacy Issues report from Mark Feldman and Tim Solle, Lockheed Environmental Affairs to Carlos Tollez, Lockheed Director of Regulatory Affairs shows:

"For much of the last 3 years, INEL [sic] has chosen to not operate the ICPP Main Stack Iodine-129 monitor based on a "literal" reading of the NESHAPs regulations. (NESHAPs require continuous monitoring of those constituents which represent 10% or more of the **potential** INEL dose.) I-129 from the ICPP Main Stack represents the single largest **actual** dose contributor at the INEL (at times, 50% of the site dose). It is our belief (and that of ORNL personnel) that the current monitoring policy for I-129 on the CPP Main Stack is not consistent with the **intent** of the regulations and represents a significant liability. (Even if defendable in court, it is difficult to explain to the public why it is a good idea to not operate an already installed monitor for the largest dose contributor on the INEL.) (Note that the I-129 monitor is now on-line for the startup of the High Level Waste Evaporator, but future intent is to take it off-line again.)" [emphasis in original]

CDC's Task Order Five Report

The most formidable obstacle to independent analysis of Department of Energy Operations is access to information. Reviewing the Centers for Disease Control (CDC) Task Order 5 report on its Idaho National Engineering and Environmental Laboratory (INEEL) Dose Reconstruction Study is an example of this fundamental paradigm. The veil of secrecy established at the beginning of the nuclear age, continues to shroud INEEL's operations from the public's eye. Independent review of CDC's Task Order 5 report is therefore fundamentally crippled from exercising the most basic of scientific processes required to validate any finding - equal access to the information so the analysis can be replicated. CDC is not troubled by this secrecy paradigm

and in fact is actively maintaining it. Under these circumstances, CDC cannot claim an unbiased scientific approach to its research.

Since its inception in 1989, the Environmental Defense Institute (EDI), has filed dozens of Freedom of Information Act (FOIA) requests with the Department of Energy (DOE). The agency launched numerous efforts to block EDI's FOIA requests starting with denial of fee waiver provided by law and attempting to impose charges as high as $1,200,000. When that tactic failed DOE tried to deny the FOIA's on the basis that EDI did not have the technical resources to understand the information nor the ability to disseminate the information to the general public. Finally, DOE has hunkered down behind the "national security" barricade by claiming that release of these fifty-year-old secret documents would compromise this country's national security. Consequently, what few documents that are released under FOIA, have major sections missing and/or major portions censored ("blacked") out.

Given this piecemeal and at best sketchy access to information, it is nearly impossible to review the full range of operations at INEEL that may have resulted in major releases of radiation into the environment, which is the subject of CDC's INEEL Dose Reconstruction Study. Specifically, undue focus on the "RaLa" Runs as being the only "green" reactor fuel reprocessing program that released large quantities of radiation into the environment during the early years, is highly questionable. The popular term "RaLa" is a misnomer since the research, development, and production is centered around the isotope barium-140. **Ra**dioactive **La**nthanum-140 is the daughter of barium-140 which was used in radiological warfare because it killed people through radiation exposure without destroying infrastructure. Other secret programs involving "green fuel" reprocessing occurred in and around the time of the RaLa Runs and therefore must also be analyzed.

That being said, what few pieces of the puzzle EDI does have contradict some of the CDC's Task Order 5 findings. For instance CDC claims the RaLa Runs stated in February 1957. Phillips Petroleum, then operating the Idaho Chemical Processing Plant (ICPP), reports gained through FOIAs report extensively about "hot" RaLa Runs as early as November of 1956. There were at least five RaLa Runs between November 1956 and the following February 1957. These early runs released more Iodine-131 than later runs and therefore must be included in CDC's analysis.