



advancing safety, health, and workplace rights in the legislative branch

Office of Compliance

Office of the General Counsel

Peter Ames Eveleth
General Counsel

February 28, 2006

VIA FACSIMILE AND U.S. MAIL

Alan M. Hantman, AIA
Architect of the Capitol
Office of the Architect of the Capitol
The Capitol, SB-15
Washington, D.C. 20515

Re: Complaint Case No. OSH-9011, Citation 24 (formerly Citation 1), December 7, 2000

Dear Mr. Hantman:

I have this day filed a Complaint with the Executive Director of the Office of Compliance pursuant to §215(c)(3) of the Congressional Accountability Act of 1995, to enforce Citation 24 issued by the General Counsel on December 7, 2000. I am enclosing a courtesy copy of the Complaint with this letter. The Office of Compliance will formally serve a copy of the Complaint together with a copy of the Procedural Rules which govern this proceeding.

I did not arrive at this decision lightly. As you know, this matter has been the subject of numerous discussions between our offices. This office advised the AOC in the course of our inspection of the Capitol Power Plant (CPP) tunnels in June and July of 2005 of the many potentially life-threatening safety and health violations that continue to exist in the utility tunnels as a result of the failure of the AOC to abate the hazards identified in the Citation. By the terms of the Citation, these violations should have been corrected no later than September 30, 2002. Instead, in large part, they appear to have been effectively ignored.

By letter of August 18, 2005, I asked that the AOC show cause why a complaint should not issue on account of the AOC's failure to correct these long standing violations. In my letter of October 27, 2005, I also advised you that given the imminent danger posed by these long-standing hazards posed to the tunnel workers, I was considering filing a complaint in order to assure the immediate correction of these violations. At that time, and during our previous meeting, I indicated our willingness to join you in support of any AOC requests for funding needed to abate hazards that were the subject of unremedied citations and any other safety violations identified by this office.

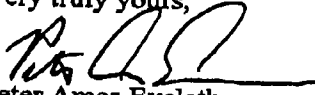
OFFICE OF COMPLIANCE, Office of the General Counsel
Page 2

I have fully considered your letter of November 17, 2005. In addition, my staff has been meeting with AOC representatives and has carefully reviewed the AOC's current plans for abating the hazards. I am pleased, of course, to learn that the AOC's Hazard Mitigation Plan contemplates a comprehensive approach to eliminating identified hazards in the tunnels. Nevertheless, the Plan does not demonstrate that the AOC has given sufficient urgency to the abatement of these hazards so as to ensure that abatement will be achieved as promptly as possible. For example, the September 30, 2005 Mitigation Plan indicates that the CPP initiated discussions with the AOC Budget office to reprogram \$1.8 million for intermediate repairs. At our meeting with AOC representatives on February 16, 2006, no reprogramming of these funds had yet been effected, and only \$200,000 had been earmarked for such repairs. While another \$1.8 million is being requested for long term repairs in the FY '07 budget, we understand that the real costs can be expected to greatly exceed that amount. In our opinion, this does not demonstrate sufficiently aggressive steps that had been promised to address the safety hazards identified in the tunnels. Moreover, the Hazard Mitigation Plan does not provide for the immediate implementation of adequate intermediate measures to protect employees while long term repairs are being completed.

In sum, given the severity and duration of these hazards, and considering the fact that the hazardous conditions have become increasingly worse because of years of inattention, I have determined that further action by our office is essential to both assure prompt and complete correction of all hazardous conditions and implementation of intermediate corrective measures to protect tunnel personnel. Accordingly, I have concluded that enforcement proceedings are appropriate and necessary in these circumstances.

I look forward to continue working with you and your staff to bring about the satisfactory resolution of this and other unremedied health and safety hazards in the covered employing offices. Should you have any questions, please do not hesitate to call me.

Very truly yours,


Peter Ames Eveleth
General Counsel

Enclosure: Complaint Case No. OSH-9011, Citation 24

cc: Kevin Mulshine; Susan P. Adams

OFFICE OF COMPLIANCE

PETER AMES EVELETH, GENERAL COUNSEL,)
 OFFICE OF COMPLIANCE,)
 Complainant,)
 v.)
 OFFICE OF THE ARCHITECT OF THE CAPITOL,)
 Respondent.)

Case No. OSH-9011
 Citation 24, December 7, 2000
 (formerly Citation 1)

COMPLAINT

Peter Ames Eveleth, General Counsel, Office of Compliance, Complainant herein, upon information and belief, alleges as follows:

1. This Complaint is brought by the General Counsel of the Office of Compliance ("General Counsel" or "Complainant") pursuant to §215(c)(3) of the Congressional Accountability Act of 1995 ("CAA"); 2 U.S.C. §1341(c)(3), and §4.14(b) of the Procedural Rules of the Office of Compliance, to enforce a citation issued by the General Counsel on December 7, 2000, directing the Office of the Architect of the Capitol to correct various violations of §5 of the Occupational Safety and Health Act of 1970 ("OSH Act"), 29 U.S.C. §651 *et seq.*
2. The Office of the Architect of the Capitol ("AOC" or "Respondent"), is an "employing office" as defined by CAA §215(a)(2)(C); 2 U.S.C. §1341(a)(2)(C).
3. The employees of the AOC are "covered employees" as defined by CAA §215(a)(2)(B); 2 U.S.C. §1341(a)(2)(B).
4. By virtue of §215 of the CAA, the General Counsel is authorized to inspect and

investigate places of employment under the jurisdiction of the employing offices and identify violations uncovered by such inspections; to issue a citation to any employing office responsible for correcting violations of the OSH Act as incorporated by the CAA; and when, after issuing a citation, the General Counsel determines that a violation has not been corrected, to file a complaint with the Office of Compliance against the employing office named in the citation.

2 U.S.C §§1801, 1812-1814, 2001, 2023, 2162.

5. The AOC is charged by the U.S. Congress with responsibility for the mechanical and structural maintenance, operation, repair, renovation, protection and care of buildings and other facilities occupied by employing offices located on Capitol Hill in Washington, D.C. ("Capitol Complex"), including the U.S. Capitol Power Plant ("CPP") and its associated utility tunnels and vaults ("tunnels"), and for correcting violations of the OSH Act identified by the General Counsel in the exercise of his statutory authority.
6. The CPP tunnels are comprised of interconnected underground passages that deliver steam, chilled water, and other utility services to numerous buildings within the Capitol Complex and its environs, including but not limited to the House, Senate, Library of Congress, and Government Printing Office Buildings. The tunnels are under the jurisdiction and control of the AOC, and consist of six tunnels designated by the AOC as the Red, Yellow, Black, Violet, Green, and Orange Lines. Covered employees routinely enter the tunnels to install and inspect equipment and perform repairs, renovation and maintenance needed to keep the tunnels, and the utility lines they contain, operational.
7. The tunnels are in an advanced state of structural deterioration. Large sections of concrete have fallen from the roofs of various tunnels, exposing significant corrosion of reinforcing steel

("rebar"). In multiple locations, concrete has not yet fallen but has separated from the rebar and is in danger of collapse at any time without warning ("incipient spalls"). The AOC has long been aware of these conditions. For example, Complainant has learned from Respondent that in May 1990, T. Y. Lin International ("TYL") conducted a study, *Repairs to Capitol Steam Tunnel*, for Respondent and advised that large areas of the concrete walls and ceilings within the tunnels were delaminated and in danger of spalling due to corrosion of embedded rebar.

8. Complainant received a Request for Safety and Health Inspection ("Request") on or about July 23, 1999 (OSH-9011), regarding serious safety and health hazards in the tunnels.

Complainant thereupon initiated an investigation and inspection.

9. In September 1999, Respondent commissioned a structural survey of the CPP tunnels by URS Greiner Woodward Clyde ("URS Greiner"), a consulting engineering firm, to conduct a detailed study of the structural integrity of the tunnels, and to advise Respondent of the actions required to correct the hazards that URS Greiner identified in the tunnels.

10. On April 3, 2000, URS Greiner issued a report to the AOC entitled *Utility Tunnel Structural Condition Assessment* ("Greiner Report"). In relevant part, the Greiner Report found that "the deterioration of the tunnel structure is due to aging, failure of [the] waterproofing protection system and prolonged exposure to high temperatures. The deterioration is rapidly advancing in some sections and requires immediate attention.... The tunnels pose a danger to the safety of the maintenance personnel. The most hazardous areas are the sections that have indications of delaminations on the roof of the tunnels. Sections of the concrete roof may collapse without any further warning and injure the tunnel personnel. There is also a possibility of complete collapse of some sections." Furthermore, the Greiner Report concluded that "[t]he

loss of concrete cover ... reduces the bond between reinforcing steel and concrete, thus weakens the structure and reduces the resistance of the structure against fire. Therefore, the tunnels with a major portion of the rebar exposed do not qualify for a fire-rated structure and pose a safety hazard in case of fire." The Greiner Report identified specific locations where concrete was in danger of falling from the ceiling and designated each such location as an "Immediate Action Items" requiring repair within one year; "Near Term Items" to be repaired within one to five years; or "Long Term Items" requiring periodic monitoring "to safeguard against safety hazards to the workers in the tunnels." Required repairs were to "be made as soon as further deterioration is observed to prevent additional spalling of concrete sections." More than 40 areas of the tunnels were identified as requiring Immediate Action, and in excess of 220 areas required Near Term repairs.

11. At Complainant's behest, the U.S. Army Corps of Engineers conducted an inspection of the CPP tunnels on June 8, 2000, and issued recommendations on July 26, 2000 ("Army Corps Report"), which stated, in relevant part, that "[p]rotection against falling concrete should be provided in all tunnels in areas labeled as requiring immediate attention in the Greiner Report. ... By no means should any duration of time be attached to the hazard of falling concrete in relation to the safety of the tunnel personnel. The delaminated concrete can fall at any time. ... [T]here is some very serious deterioration in the tunnels ... [that] is a constant, continuing phenomena. It should also be understood that at some point the rate of deterioration could actually accelerate. Therefore it is extremely important that a quality monitoring program be put into place to detect new areas of delamination and to monitor existing areas of delamination." A copy of the Army Corps Report was provided to the AOC in or about August 2000.

12. In late November 2000, Complainant retained the services of Wiss, Janney, Elstner Associates, Inc. ("WJE"), a structural engineering firm, to review the Greiner Report and other tunnel studies, and to inspect and perform a structural analysis of certain portions of the tunnels. In a December 5, 2000 report, among other things, WJE agreed with URS Greiner and the Army Corps of Engineers that incipient spalls may not be detected visually. Since it concluded that the extent of hidden delamination was uncertain, it recommended that a more accurate and comprehensive delamination survey be performed, such as impact echo testing and selective hole drilling. WJE further concurred with prior studies, and recommended that a temporary protection and warning system be installed to include, in particular, removal of concrete where it appeared to be unsound or delaminated, and in areas where delamination was not visible to the naked eye, installation of a bolt and spring system to both hold up the concrete and provide warning that concrete was spalling. Yearly inspections of these areas should be conducted by Respondent, according to WJE. Respondent failed to undertake the foregoing recommendations or other equally effective alternative measures to protect the health and safety of the employees.

13. On December 7, 2000, the General Counsel issued a three-part citation (Citation 24, formerly designated as Citation 1) ("Citation"), identifying and describing serious health and safety hazards within the tunnels in violation of §215 of the CAA. A copy of the Citation, describing the violations and setting forth the corresponding dates by which abatements were required, is attached hereto as Exhibit A.

14. Item I of the Citation cited the serious hazard posed by "chunks of concrete that may fall from the [tunnel] ceiling[s] without warning" as violating the General Duty Clause of the OSH

Act, 29 U.S.C. §654(a)(1). The Citation directed Respondent to "take measures to protect employees where concrete has loosened or separated and could fall without warning (incipient spalls)" including "the controlled removal or bolting of delaminated concrete areas." In addition, "because deterioration is ongoing," the Citation directed that "the tunnels should be closely monitored for progressive deterioration and repairs made when new areas of loosened or separated concrete develop that could injure employees."

15. Item 2 of the Citation cited the adequacy of the communications system for employees working in the tunnels to communicate with AOC personnel in the event of emergencies as violating 29 CFR §1910.146(h)(3) and (i)(5). Because of numerous hazards within the tunnels, such as falling concrete and extreme heat, the tunnels constitute "confined space areas" pursuant to 29 CFR §1910.146(h)(3) and (i)(5), that necessitate reliable communications between employees working in the tunnels and attendants located outside of the tunnels responsible for monitoring their health and safety. The Citation directed that the AOC "install a system throughout the tunnels that allows continuous communication between employees working in the tunnel and attendants outside the tunnel. In the interim, follow the practice of establishing verbal communications at street grates, manholes, or other access points as frequently as feasible. As the worker proceeds through the tunnels, the attendants and worker should establish a specific time and location for their next communication."

16. Item 3 of the Citation cited the AOC's failure, under the permit-required confined space program required by 29 CFR §1910.146(c)(4), to "implement the means, procedures, and practices necessary for safe permit space entry operations or provide necessary equipment in that the means provided for employees to evacuate the tunnels in an emergency were inadequate to

permit them to promptly escape,” as violating 29 CFR §1910.146(d)(3) and (4) or §1910.36(b). In particular, the Citation noted that there are long stretches in the tunnels where employees are unable to readily evacuate the tunnels to the street in the event of an emergency without assistance from outside rescuers who would have to be called to the scene. Many manholes and other possible exit areas are bolted or welded shut. This inability of employees to quickly evacuate on their own could require them to remain in the tunnels, exposed to fire or other dangerous conditions that could cause preventable injuries or fatalities while they waited for assistance from outside rescuers. The Citation directed that the AOC “[i]ninstall emergency egress hatches or provide alternative means to enable employees to evacuate the tunnels to the street in an emergency.”

17. Each of the Items of the Citation required the AOC to correct the hazards “as soon as possible” but in no event later than the end of the fiscal year following the fiscal year in which the citation was issued; that is, no later than September 30, 2002.

18. The CAA requires that if new appropriated funds are necessary to correct a violation for which a citation is issued, correction shall take place as soon as possible, but not later than the end of the fiscal year following the fiscal year in which the citation is issued. CAA §215(c)(6); 2 U.S.C. §1341(c)(6).

19. Respondent did not contest the Citation, the abatement actions required, or the dates by which the abatements were to have been completed.

UNCORRECTED VIOLATIONS

20. Alan M. Hantman, FAIA, is the Architect of the Capitol. Christopher Potter is the Deputy Director, Utilities and Power, U.S. Capitol Power Plant, Office of the Architect of the Capitol.

By virtue of their positions, they are officials of Respondent that are responsible for the care, maintenance and repair of the U.S. Capitol Power Plant and its tunnels, the health and safety of the employees therein, and the abatement of the violations set forth in Items 1-3 of the Citation.

21. Respondent is the entity under the CAA responsible for complying with the Citation and ensuring abatement of the violations delineated by the Citation.
22. Since Respondent has failed to comply with the Citation and abate, as directed, the violations set forth in Items 1-3 thereof, covered employees have been and continue to be routinely and continuously exposed to the severe and life-threatening hazardous conditions hereinafter described.
23. Because Respondent has failed to heed either the directives of the Citations or the recommendations of the engineering consultants, many areas within the tunnels conditions are more hazardous to covered employees than they were in 1999 when Greiner conducted the initial inspection.
24. Item 1 of the Citation noted that “[t]o monitor ongoing deterioration, AOC has entered into a contract [with URS Corporation (“URS”)] for quarterly inspections to detect changes in the condition of the tunnel structure.” Respondent contracted with URS to monitor the status of hazardous conditions within the tunnels identified in the Greiner Report, identify any additional hazards, and provide recommendations for corrective actions. The Citation directed that “[t]his monitoring should be continued until permanent repairs are made and steps should be taken to protect employees when areas where there is a danger of falling concrete are identified.”
25. URS subsequently prepared quarterly reports (“URS Quarterly Reports”), based upon inspections it conducted following the issuance of the Citation, and found previously unidentified

as well as newly developing areas of spalled and delaminating concrete, exposed rebar, dislodged repair patches, wall movement at construction joints, cracked ceilings, walls and floors, bent shoring supports, large pieces of fallen concrete, water seepage and flooding.

26. Notwithstanding the recommendations of the consulting engineers that the AOC implement a quality monitoring program "to detect new areas of delamination and to monitor existing areas of delamination," and the Citation requirement that the AOC continue to monitor ongoing deterioration "until permanent repairs are made," Respondent discontinued the URS quarterly inspection monitoring program in or about August 2002, without notice or explanation to Complainant. Respondent has failed to effect an adequate monitoring program since that time.
27. Since the issuance of the Citation, the concrete ceiling has continued to delaminate, posing a severe and ongoing hazard to covered employees and contractors utilizing the tunnels. Tunnel workers have been struck and injured by falling concrete, causing them to incur lost days from work.
28. Health and safety inspectors of the Office of the General Counsel ("Inspectors") inspected the CPP and its tunnels on various dates in June and July, 2005, as part of the 109th Congress biennial inspections conducted pursuant to §215(e) of the CAA, and to determine the extent to which Respondent had adequately corrected the violations as required by the Citation.
29. With the exception of 600 feet of tunnel that was replaced before the 2005 inspection, the Inspectors discovered that Respondent did not repair or otherwise abate the hazardous and deteriorating conditions delineated in the Greiner Report as Immediate Action Items requiring corrective action Immediately (within one year) or Near Term (within five years).

30. Although the Greiner Report directed that Immediate Action Items "must be monitored for progressive deterioration and should be structurally reinforced with shoring," insufficient shoring has been installed by Respondent to protect employees in areas where concrete has loosened or separated, and immediate repair or replacement is imperative.

31. Deteriorated areas identified in the Greiner Report have continued to worsen, and additional areas of spalling concrete subsequently have developed in other locations throughout the tunnels that have not been sufficiently ameliorated by adequate interim measures, repaired or otherwise abated by Respondent.

32. The violation set forth in Item 2 of the Citation likewise remains unabated. On July 10, 2002, Respondent filed with Complainant a Notification of Corrective Action in which it represented that on July 5, 2002, it had completed correction of this hazard by installing a leaky cable "communication system [in the tunnels that] does allow continuous monitoring of the status of employees assigned in permit confined space as required by 29 CFR §1910.146(h)(3) and 146(i)(5)."

33. Notwithstanding this representation, the communications system installed by Respondent has, in fact, failed to assure reliable, continuous communications between employees working in the tunnels and attendants located outside the tunnels. The system was not installed in all areas of the tunnels and, therefore, workers in areas outside that range do not have access to the system. Due to extreme heat conditions within the tunnels, radios used with the system deteriorate prematurely and frequently do not work. The system does not have a dedicated radio channel, and tunnel workers must compete with non-tunnel personnel using the same frequency. They would, thus, be unable at times of high radio traffic to communicate with rescuers if an

