



Homeland Security

September 23, 2020

Mr. Jeffrey Van Kent
City of Portland
Bureau of Environmental Services
Water Pollution Control Laboratory
6543 N. Burlington Ave.
Portland, OR 97204-5452

Via E-mail: Jeffrey.VanKent@portlandoregon.gov

Dear Mr. Van Kent:

I am the Assistant Director of Policy, Communications and Engagement for the Federal Protective Service (FPS). FPS is a law enforcement agency within the Department of Homeland Security (DHS) with the primary responsibility for preventing, protecting, responding to and recovering from terrorism, criminal acts, and other hazards threatening the Federal Government's critical infrastructure, services, and the people who provide or receive them.

This letter is in response to the September 10, 2020, Notice of Violation (NOV) the Bureau of Environmental Services (BES) issued to the General Services Administration (GSA) related to the Federal Courthouse located at 1000 SW 3rd Avenue in downtown Portland. The NOV cited BES's inability to access catch basin AQY841 located at the south corner of SW 3rd Street and SW Salmon Street due to obstruction by a security fence.

FPS installed the security fence as an emergency countermeasure to prevent individuals from gaining illegal entry into the Courthouse or otherwise causing damage to the building or injury to its occupants. FPS did so pursuant to its statutory authority under 40 U.S.C. § 1315.

FPS shares BES's concerns for public safety and environmental conditions in Portland's stormwater infrastructure and waterways. Therefore, FPS is working with GSA, which manages the property, to provide BES access to catch basin AQY841 consistent with the need to maintain security on the property. We expect to complete our determination on the most expeditious means to provide access to catch basin AQY841 within the next two weeks and will reach out to your office accordingly. In the meantime, if you need to contact someone from FPS locally concerning this matter, please reach out to Area Commander Luis Lopez. Commander Lopez can be reached at (253) 365-4702 or Luis.Lopez@fps.dhs.gov.

The NOV also requested the Safety Data Sheets (SDS) for the Riot Control Agents (RCAs) being used in the vicinity of the Courthouse. The SDS for the RCAs that FPS has used as part of its crowd control operations in Portland are attached.

It should be noted, that in addition to Federal law enforcement agencies, state and local law enforcement agencies have also used a variety of RCAs in the vicinity of the Courthouse. Moreover, individuals protesting around the Courthouse regularly direct projectiles filled with what could be liquid chemicals at the Courthouse and the Federal law enforcement officers protecting it.

We hope that this information alleviates any concern BES has regarding access to catch basin AQY841. However, to the extent BES or the City of Portland purports to prohibit or impede FPS from erecting fencing or from taking any other actions necessary to carry out its statutorily authorized functions, those requirements are unconstitutional because they violate the Supremacy Clause, which prohibits local governments from regulating Federal Government activities. Moreover, the Federal Government is absolutely immune from fines or penalties issued by local governments unless there is a clear waiver of sovereign immunity by Congress. There has been no such waiver here.

We look forward to working with your office to provide the requested access, and to continuing our work with the City of Portland to resolve the security issues around the Courthouse as quickly as possible.

Sincerely,

David A. Hess
Assistant Director
Policy, Communications and Engagement

Encl: Notice of Violation
SDS for FPS RCAs

CC: David Mery, GSA
Area Commander, Luis Lopez, FPS